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RECORD, CASE No. 13,780.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 188.

CHARLES B. SMITH, BENJAMIN A. BOURN, AND OLCOTT B. COLTON, PARTNERS AS SMITH, BOURN & COMPANY, APPELLANTS,

vs.

THE WHITMAN SADDLE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

FILED OCTOBER 15, 1889.

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1 United States Circuit Court, District of Connecticut. In Equity.

WHITMAN SADDLE COMPANY, Complainant,
vs.
CHARLES B. SMITH, BENJAMIN A. BOURN, and OLCOTT B. COLTON, Members of the Copartnership of Smith, Bourn & Co., Respondent-.

Appeal.

And now the above-named respondents, at the same time the final decree is herein entered, on the 3rd day of October, 1889, in open court come and show to this court that said final decree involves the construction of the acts of Congress concerning patents for useful inventions, and that they are aggrieved by said decree and respectfully pray this court to allow an appeal herein to the Supreme Court of the United States, and that a transcript of the pleadings, evidence, proceedings, and decree in the said cause may be sent to said Supreme Court without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the decree of the circuit court and every part thereof may be reversed and such other decree be made as to the said Supreme Court shall seem just.

SMITH, BOURN & CO.

Entered and filed this October 3, 1889, and the appeal allowed.
Attest: E. E. MARVIN, *Clerk.*

2–5 And on the 11th day of October an appeal bond was filed in court as follows, to wit:

Appeal Bond.

Know all men by these presents that Charles B. Smith, as principal, and Benjamin A. Bourn, both of said Hartford, surety, are held and firmly bound unto the Whitman Saddle Company in the sum of twelve hundred dollars, to be paid as liquidated damages; for the payment of which, well and truly to be made to the United States, we bind ourselves, our heirs, executors, administrators, or assigns, jointly and several, firmly by these presents.

Sealed with our seals this 11th day of October, 1889.

The condition of the above obligation is such that whereas Smith, Bourne & Company have appealed to the United States Supreme Court to reverse the judgment and decree rendered in the case of The Whitman Saddle Company *vs.* Smith, Bourn & Company by the United States circuit court for the district of Connecticut:

Now, therefore, the condition of this obligation is such that if the above-named Smith, Bourn & Company shall prosecute their said appeal to effect and answer all costs and damages if they shall fail to make good their appeal, then this obligation is void; otherwise to remain in full force and virtue.

In testimony whereof the said Charles B. Smith and the said Benjamin A. Bourn have hereunto subscribed their hands and affixed their seals the day first above written.

CHAS. B. SMITH. [L. S.]
BENJAMIN A. BOURN. [L. S.]

Witness:
E. E. MARVIN.
OLCOTT B. COLTON.

6 *The Return of the Judges of the Circuit Court of the United States for the District of Connecticut to the Foregoing Appeal.*

The bill, answer, and pleadings, evidence, and proceedings whereof mention is therein made follow in these words, viz:

7 WHITMAN SADDLE COMPANY
vs.
CHARLES SMITH and BENJAMIN A. BOURN. } No. 537. In Equity.

Be it remembered that on the 13th day of December, 1886, there was filed in this court a bill in equity in the words and figures following, viz:

United States Circuit Court for the District of Connecticut.

WHITMAN SADDLE COMPANY
vs.
CHARLES D. SMITH and BENJAMIN A. BOURN, Doing Business under the Firm Name and Style of Smith, Bourn & Company. } In Equity.

To the honorable the judges of the circuit court of the United States for the district of Connecticut, in the second circuit:

The Whitman Saddle Company, a corporation organized and existing under and by virtue of the laws of the State of New York and having its principal place of business at No. 25 Murray street, in the city of New York, in said State of New York, brings this its bill of complaint against Charles D. Smith and Benjamin A. Bourn, residing in the city of Hartford, in the State of Connecticut, and citizens of the said State of Connecticut and doing business in said city of Hartford under the firm name and style of Smith, Bourn & Company.

And your orator, complaining, shows unto your honors that heretofore and before the 24th day of September, 1878, Royal E. Whitman was the first and original inventor and producer of a certain new and useful design for saddles not known or used by others before his said invention and not for more than two years prior to the date of his application for a patent therefor in public use or on sale.

8 And your orator further shows unto your honors that the said Royal E. Whitman, being as aforesaid the inventor and

producer of the said design for saddles and being a citizen of the United States, made application to the Commissioner of Patents of the United States for letters patent therefor in accordance with the existing acts of Congress, and, having duly complied in all respects with the conditions and requisitions of said acts, on the 24th day of September, 1878, letters patent of the United States for designs No. 10844, signed by the Secretary of the Interior, countersigned by the Commissioner of Patents, and sealed with the seal of the Patent Office, all in due form of law and for the said invention and production, were granted and issued to the said Royal E. Whitman, whereby there was secured to the said Royal E. Whitman, his heirs or assigns, for the term of fourteen years from the 24th day of September, 1878, the full and exclusive right of making, using, and vending to others to be used the said invention, which said letters patent were duly recorded in the United States Patent Office, and which or a duly certified copy of which is ready here in court to be produced.

And your orator further shows unto your honors that your orator, The Whitman Saddle Company, was organized in the month of April of the year 1880, and that it purchased from the firm of R. E. Whitman, of which the said Royal E. Whitman was a member, all of the stock of saddles, saddle-trees, bridles, bits, spurs, and harness in the store of the said firm, in the city of New York, and in its factory, in the city of Newark, in the State of New Jersey, together with all the letters patent of the said firm, including said letters patent for design No. 10844, relating to the manufacture of saddles and other articles for equestrian uses, and said patents were duly assigned to your orator by an instrument in writing, given for a good and valuable consideration, bearing date the 1st day of May, 1880, and duly recorded in the Patent Office on the sixth day of October, 1880, in Liber Z 25, page 17, of Transfers of Patents, which assignment or a certified copy thereof is ready here in court to be produced.

And your orator further shows unto your honors that ever since the date of the last above-named assignment it has been the sole and exclusive owner of the said letters patent No. 10844.

And your orator further shows unto your honors that the said Royal E. Whitman and the firm of R. E. Whitman, his successor, was largely engaged in the manufacture and sale of saddles for equestrian use, and that the saddles made by said firm were made under and in accordance with the inventions described and claimed in letters patent granted to the said Royal E. Whitman and owned by him and the said firm; that said saddles were of novel and peculiar construction and shape and possessed the important advantages of giving great ease to the rider without producing or causing any injury to the back of the horse, and were, at the same time, exceedingly light and easy to handle and capable of being manufactured at a reasonable cost, and that the said saddles, by reason of their invention by the said Whitman and their manufacture and sale by him and by his said firm, became known in the market and to purchasers as the "Whitman" saddles, and were advertised and sold by that name.

9

And your orator further shows unto your honors that your orator, The Whitman Saddle Company, during the year 1880 became the successor in business of the said firm of R. E. Whitman, all the members of said firm becoming members of the said company and selling all of their business relating to the manufacture and sale of saddles, as well as all inventions and letters patent relating to saddles, to your orator, and that the said Royal E. Whitman sold to your orator all patentable improvements in saddles which has been or should thereafter be made by him and agreed to transfer all patents obtained for such inventions to your orator; that your orator, at great cost and expense, provided itself with additional facilities and machinery over those possessed by its predecessors in business and entered upon the manufacture of the well-known Whitman saddles, which had become justly celebrated through their introduction by the said Royal E. Whitman and the firm of R. E. Whitman, as well as by means of illustrated catalogues and circulars and advertisements containing testimonials from eminent persons who had thoroughly tested the said saddles in actual use, which catalogues, circulars, and advertisements were largely distributed throughout the trade and to the public generally, and that your orator, after its succession to the business of the said firm of R. E. Whitman, published additional catalogues, circulars, and advertisements containing additional testimonials of the merits and superiorities of the said Whitman saddles, and caused the same to be widely distributed throughout the United States, thus giving great notoriety to the said Whitman saddles, which said catalogues, circulars, and advertisements, or a part thereof, are ready here in court to be produced.

And your orator further shows unto your honors that since the grant of said letters patent No. 10844 and since your orator became the owner thereof as aforesaid your orator has made and sold a large number of saddles made under and in accordance with and containing and embodying the invention and design of said letters patent, and has invested and expended large sums of money in the manufacture and sale of such saddles and in its efforts to bring the same more fully to the knowledge of the public and to increase their sale by means of additional catalogues, circulars, and advertisements containing new testimonials and in other ways in order to make the said invention profitable to itself and useful to the public, and that the public have generally acknowledged and acquiesced in the rights of your orator as secured to it by the said letters patent, and that large quantities of saddles made in accordance with and containing the said invention and design have been made and sold by your orator, to the great advantage of the public, and your orator believes that it will receive large gains and profits therefrom if infringements by said defendants and their confederates shall be prevented.

And your orator further shows unto your honors that on or about the month of May, 1885, your orator commenced a suit in equity in the United States circuit court for the district of New Jersey against the Peters & Calhoun Company for infringement of said

letters patent No. 10844, and that thereafter, in the month of July of said year, a decree was entered in said suit, wherein the said The Peters & Calhoun Company acknowledged that said letters patent were good and valid, that your orator was the owner thereof, that the said company had infringed the same, and that said company, their officers, agents, and representatives, be perpetually enjoined and restrained from infringing said letters patent, and that thereafter and during the month of November, 1885, your orator commenced a suit in the same court against one Joseph Bevan, of the city of Newark, in the said State of New Jersey, for alleged infringement of said letters patent, and that thereafter and during the month of December, 1885, substantially the same decree was entered as in the said suit against the Peters & Calhoun
11 Company, and a writ of injunction was duly issued and served upon the said Bevan perpetually enjoining and restraining him from infringing said letters patent; all which will duly appear by reference to the files in the office of the clerk of said court.

But the defendants, well knowing the premises and the rights secured to your orator as aforesaid, but contriving to injure your orator and to deprive it of the benefits and advantages which might and otherwise would accrue to it from the said invention, after the issuing as aforesaid of the said letters patent No. 10844 and after your orator became the owner thereof, as aforesaid, and before the commencement of this suit did, as your orator is informed and believes, within the district of Connecticut, to wit, at the city of Hartford, in this district, and at various other places in the United States, without the license or allowance and against the will of your orator and in violation of its rights and in infringement of said letters patent No. 10844, unlawfully and wrongfully and in defiance of the rights of your orator make, construct, use, vend to others to be used, saddles made in accordance with and embodying and containing in all the material parts of the invention and design of said letters patent No. 10844 and summed up in the claim thereof, and that they still continue so to do, and that they are threatening to make large quantities of such saddles and to sell the same and supply the market therewith.

And your orator further shows unto your honors upon information and belief that the alleged infringement of said letters patent No. 10844 by the defendants is of a most aggravated character and calculated to cause the greatest injury and damage to your orator and to the public in these respects, namely, that the saddles made and sold by the defendants are in appearance almost exact copies of the said patented design and of the saddles made and sold by your orator under the said design patent and which have been for many years sold in the market and known to the public as "Whitman" saddles; that the resemblance between the saddles made and sold by the defendants and the genuine Whitman saddles made and sold by your orator is so close in all their essential features that in some instances at least the jobbers have sold and billed the saddles obtained from the defendants to the retailers as "Whitman" saddles,

and the retailers, even though they were familiar with the
12 genuine Whitman saddles made and sold by your orator, have been deceived and led to believe that the saddles made and sold by the defendants were genuine Whitman saddles and have sold them to their customers and to the public as genuine Whitman saddles, but that the saddles made and sold by the defendants, by reason — want of skill and imperfections in their manufacture, have proved to be greatly inferior to the genuine Whitman saddles made and sold by your orator, and in some cases have proved so unserviceable that they have been returned by the users to their vendors, whereby the genuine Whitman saddles of your orator have been and are liable to be brought into disrepute and the sales of the same largely diminished, to the great loss and injury of your orator in its business of making and selling Whitman saddles.

And your orator further shows unto your honors that the defendants have made and sold saddles in infringement of your orator's rights and in defiance of the rights acquired by and secured to your orator as aforesaid and to its great and irreparable loss and injury, and whereby your orator has been and still is being deprived of great gains and profits that might and otherwise would have been obtained and enjoyed by it, but which have been realized and enjoyed by the defendants by and through their aforesaid unlawful acts and doings.

And your orator further shows unto your honors on information and belief that the said defendants have made and sold a large number of the said patented saddles and have a large number on hand which they are offering for sale, and have made and realized large profits and advantages therefrom, but to what extent and how much exactly your orator does not know and prays discovery thereof; and your orator avers that the unlicensed use of the said invention by said defendants and their other aforesaid unlawful acts in disregard and defiance of the rights of your orator have the effect to aid, encourage, and induce others to venture to infringe said letter patent in violation of your orator's rights.

And your orator further shows unto your honors that it has caused notice to be given to said defendants of said infringement of your orator's rights in the premises, and has requested them to desist and refrain therefrom, but they have disregarded said notice and refused to desist from said infringement, and still continue to make and sell saddles as aforesaid in disregard of your orator's rights.

13 And forasmuch as your orator can have no adequate relief except in this court, to the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief prayed, and may, upon their oaths and according to their best and utmost knowledge, information, and belief, full, true, and perfect answers make to the premises and to the several matters and things hereinbefore stated and charged as fully and particularly as if separately interrogated as to each and every of such matters, and that the defendants may be compelled to account for and pay to your orator the profits by them acquired and the amount of the damages

suffered by your orator from their aforesaid unlawful acts, together with such increase upon the actual damages, according to the provisions of law relating thereto, as may seem to this honorable court meet and just, and that the said defendants, their agents, servants, attorneys, workmen, employees, and representatives, and each and every of them, may be enjoined and restrained, provisionally and preliminarily as well as perpetually, by the order and injunction of this honorable court from, directly and indirectly, making, using, or vending or putting into practice, operation, or use or in any way counterfeiting or imitating the said patented invention or any material and substantial part thereof, or from in any other way violating the rights of your orator in connection with the manufacture, use, or sale of the said patented invention, and that the said patented saddles now in their possession may be destroyed or delivered up to your orator for that purpose, and that the said defendants may be decreed to pay the costs of this suit, and that your orator may have such other and further relief as to this honorable court shall seem meet and agreeable to equity—

May it please your honors to grant unto your orator a writ of injunction conformable to the prayer of this bill, and also a writ of *subpœna ad respondendum* issuing out of and under the seal of this court, directed to the defendants, Charles D. Smith and Benjamin A. Bourn, commanding them, on a certain day to be therein named and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises and to stand to and abide by such orders and decrees in the premises as to the court shall seem meet and in accordance with the principles of equity.

And your orator will ever pray.

WHITMAN SADDLE COMPANY,
By HENRY L. BUCK, *President.*

DUNCAN, CURTIS & PAGE,
Solicitors for Complainant.
ROBERT H. DUNCAN, *Of Counsel.*

14 UNITED STATES OF AMERICA, } ss:
City, County, and State of New York, }

On this 11th day of December, 1886, personally appeared before me, the undersigned notary public, Henry L. Buck, who, being by me duly sworn, deposes and says that he is the president of The Whitman Saddle Company, corporation complainant named in the foregoing bill of complaint; that he has read the said bill of complaint signed by the said complainant and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

HENRY L. BUCK.

Subscribed and sworn to before me this 11th day of December, A. D. 1886.

ROBERT F. GAYLORD,
[L. S.] *Notary Public* (166), *New York County.*

15 UNITED STATES PATENT OFFICE.

ROYAL E. WHITMAN, of Springfield, Massachusetts.

Design for Saddles.

Specification forming part of Design No. 10844, dated September 24, 1878; application filed September 2, 1878. (Term of patent 14 years.)

To all whom it may concern:

Be it known that I, Royal E. Whitman, of Springfield, Hampden county, State of Massachusetts, have invented an improved design for saddles, of which the following is a specification:

The nature of my design is fully illustrated in the accompanying photographic picture, to which reference is made.

Figure I is a side profile view, and Fig. II a partial front view.

The pommel B rises at the fork to a point on, or nearly on, a horizontal level with the raised and prolonged cantle. The pommel, on its rear side, falls nearly perpendicularly for some inches, when it is joined by the line forming the profile of the seat. The straight inner side of the pommel (marked *b*) is joined at *c* by the line C of the seat. The line C describes a gradual curve to the center of the seat, from thence gradually rising to the highest point of the cantle D. The cantle is defined in side profile by the lines *e f*, starting from its outer end in continuous curves, which separate to define the thickness of the cantle before uniting at a point, *g*, near the center of the saddle, the l-ne *f* forming the outside and rear edge of the saddle until joined by the line *h*, which, leaving the line *f* at an angle, bends to form the rear bearing of the saddle. The line from the front of the pommel B inclines outward for some distance in a nearly straight line, *m*, before being rounded toward the rear to join the line *h*, at the point where the stirrup-strap is attached, to thus define the bottom line of the saddle, the outline given by line *m* from the pommel being the general form of the English saddle-tree known as the "cut-back."

A plan view of the saddle shows a center longitudinal slot extending from pommel to cantle.

I am aware that portions of the curves employed by me have been used in the designing of saddles; but when combined with a longitudinally-slotted tree, the lines I employ to give the profile form a new design for saddles, and giving the general idea in the front, lower, and rear lines of a sea-fowl or vessel modeled upon the same curves, and by these curves and lines giving the impression of lightness, grace, and comfort, that could not as well be conveyed by any others, as the impression of comfort is given by the large amount of

bearing-surface obtained without undue elevation above the back of the animal, combined with the large seat for the rider, and lightness and grace by the small surface of tree shown in vertical plan, coupled with the form in which it is presented.

Now, having described my invention, what I claim is—

The design for a riding-saddle, substantially as shown and described.

ROYAL E. WHITMAN.

Witnesses:
R. F. HYDE.
T. M. BROWN.

And on the same day a writ of subpœna issued out of court, directed to the said respondent, which was duly served and returned, and which, with the return of service endorsed thereon, is in the words and figures following, viz:

16 The President of the United States of America to the marshal of the district of Connecticut, sendeth Greeting:

You are hereby commanded to summon Charles D. Smith and Benjamin A. Bourn, both of the city of Hartford and State of Connecticut and citizens of said State and doing business in said city of Hartford, in the State and district of Connecticut, under the firm name of Smith, Bourn & Company, named respondents in the bill of complaint herein mentioned, to appear before the judges of the circuit court of the United States of America for the district of Connecticut, in the second circuit, in equity, on the first Monday of January, 1887, wheresoever the said court shall then be, to answer a bill of complaint exhibited against said respondents in said court by the Whitman Saddle Company, a corporation organized and existing under the laws of the State of New York and having its principal place of business at 118 Chambers street, in the city of New York, and then and there to answer the same, and to do and abide by what said court may order and decree in the premises.

Make due service and return at least twenty days before said first Monday of January, 1887.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Hartford, this 13th day of December, A. D. 1886.

E. E. MARVIN, *Clerk.*

The defendant is required to enter its appearance in said cause in the clerk's office of said court on or before the day at which
17 this writ is returnable, or by the rules of said court said bill will be taken as confessed.

E. E. MARVIN, *Clerk.*

DUNCAN, CURTIS & PAGE,
32 *Park Place, N. Y. City, Complainant's Solicitors.*

UNITED STATES OF AMERICA.

DISTRICT OF CONNECTICUT, *Hartford, Hartford County,* } *ss:*

DEC. 13TH, 1886.

Then and there I served the within writ on Charles D. Smith and Benjamin A. Bourn, herein named, by delivering to and leaving with each personally a true and attested copy hereof.

Attest: NATHAN D. BATES,
U. S. Marshal,
By MILES B. PRESTON, *Deputy.*

Fees:

Service	4 00
Copy	1 50
4 miles, travel	40
3 endorsements	45
	$6 35

And on the same day Messrs. Duncan, Curtis & Page appeared for the complainant, and on the 22d day of December, 1886, Wm. E. Simonds, Esqr., appeared for the respondents.

And on the 28th day of December, 1886, amendment to complaint was filed in the words and figures following, viz:

18 United States Circuit Court for the District of Connecticut.

WHITMAN SADDLE COMPANY
vs.
CHARLES D. SMITH and BENJAMIN A. BOURN, Doing Business under the Firm Name and Style of Smith, Bourn & Company. } In Equity.

The bill of complaint in the above-entitled suit is hereby amended as follows:

First, by substituting for the name of "Charles D. Smith" the name of Charles B. Smith wherever in said bill the former name occurs; and, second, by inserting in said bill of complaint, after the name of Benjamin A. Bourn, and wherever said name occurs, the name of Olcott B. Colton as one of the defendants in said suit.

WHITMAN SADDLE CO.,
By DUNCAN, CURTIS & PAGE,
Solicitors for Complainant.

ROBERT H. DUNCAN, *Of Counsel.*

And on the 3rd day of January, 1887, respondents' answer was filed in the words and figures following, viz:

19 United States Circuit Court, Second Circuit, District of Connecticut.

WHITMAN SADDLE COMPANY
vs.
SMITH, BOURN & COMPANY. } In Equity.

Respondents' Answer.

These respondents, Charles B. Smith, Benjamin A. Bourn, and Olcott B. Colton, of Hartford, in the county of Hartford and State of Connecticut, partners in business at said Hartford under the style of Smith, Bourn & Company, make answer to the bill of complaint in this cause as follows:

I. These respondents admit the issue of pretended letters patent to Royal E. Whitman for designs for saddles, dated September 24, 1878, and No. 10844, but these respondents do not know, save by the allegations of said bill of complaint, whether or not said letters patent were ever assigned to said complainant or whether said complainant is a corporation, and they leave said complainant to make due proof thereof.

II. These respondents deny that they have ever infringed upon said letters patent or upon any rights of said complainant, and deny said complainant's right to any injunction, provisional or perpetual, against these respondents, and deny said complainant's right to any profits, damages, or costs, and to any other or further relief whatever against these respondents.

20 III. These respondents, answering, upon information and belief say that as regards the suits in equity against the Peters & Calhoun Company and against Joseph Bevan, specified in the bill of complaint in this cause, there was no real contest whatever between the parties thereto; the results reached therein were by collusion and consent of parties thereto, and they are of no force whatever except as between the parties thereto; and, moreover, answering, upon information and belief these respondents deny that the public have generally acknowledged and acquiesced in the rights of said complainant as pretended to be secured to said complainant by said letters patent.

IV. These respondents further answer upon knowledge, information, advice, and belief and say that said letters patent purport to be granted upon a design; that the subject-matter described and claimed therein consists of features of mechanical construction designed to serve utilitarian rather than ornamental purposes, and the said letters patent are therefore null and void.

V. These respondents further answer upon knowledge, information, advice, and belief and say that the pretended new design described and claimed in said letters patent is made up of forms, shapes, and configurations which were old; that their union constitutes mere aggregation destitute of patentable novelty as a design, and that said letters patent are therefore null and void.

VI. These respondents further answer upon knowledge, advice, and belief and say that the patented new design described and

claimed in said letters patent is in substance old as a whole and in all its parts; that for many years prior to the production of said patented new design by said Whitman it was usual and customary for makers of saddles and saddle-trees to vary the shapes and contours of saddles and saddle-trees in almost endless variety, as dictated by their own skill and taste and as called for by different customers; that long prior to the production of said alleged new design by said Whitman there were hundreds of different models of saddles and saddle-trees in common and public use in this county; that whatever was done by said Whitman in the production of said patented new design was but the exercise of mere mechanical skill common to the practice of the art, and that said letters patent are null and void, for that the thing described and claimed therein is but the product of mere mechanical skill.

21 VII. These respondents further answer upon knowledge, information, advice, and belief and say that said letters patent are null and void because that said Royal E. Whitman was not the original inventor or producer of the alleged new design set forth and claimed therein, but that the same and all material and substantial parts thereof were long prior to any supposed invention or production therefor by said Royal E. Whitman known to and in public use by the following-named persons at the following-named places, to wit:

Benjamin A. Bourn, of Hartford, Connecticut, at said Hartford.

William P. Goodsell, of Hartford, Connecticut, at Newark, in the State of New Jersey, and at said Hartford.

William Hill, of Hartford, Connecticut, at said Newark and at said Hartford.

Joseph Beven, of said Newark, at said Newark.

C. H. Jacobus, of said Newark, at said Newark.

J. S. Sullivan, of Jefferson City, Missouri, at said Jefferson City.

Edward Wells, of Bridgeport, Connecticut, at said Bridgeport.

G. Willis Peters, of Newark, New Jersey, at said Newark.

Mr. Morrison, of New York city, of the firm of Miller, Morrison & Company, of New York city, at New York city.

W. H. Jenifer, of Baltimore, in the State of Maryland, at said Baltimore.

VIII. These respondents further answer upon information and belief and say that the design letters patent are null and void, for that said Whitman surreptitiously and unjustly obtained the same for that which was in fact first invented and produced by C. H. Jacobus, of Newark, in the State of New Jersey, who invented and produced said design at said Newark and who was using and did use reasonable diligence in adapting and perfecting the same.

IX. These respondents further answer upon information, advice, and belief and say that said design letters patent are null and void because that said Whitman was not the first and original producer or inventor of the alleged design therein shown and claimed, but that the said alleged design was, long prior to any supposed production or invention thereof by said Whitman, patented and de-

scribed in and by the following-mentioned printed publications and letters patent, to wit:

22 (1.) United States patent to J. F. Lehr, No. 4100, granted and dated July 5, 1845.

(2.) United States patent to Joseph C. Smith, No. 8064, granted and dated April 29, 1851.

(3.) United States patent to J. W. Boyd, No. 30118, dated and granted September 25, 1860.

(4.) United States patent to J. Chenoweth, No. 40158, dated and granted October 6, 1863.

(5.) United States patent to J. M. Flautt, No. 45235, dated and granted November 29, 1864.

(6.) United States patent to Philip Becker, No. 235,775, granted and dated February 11, 1873.

(7.) United States patent to George E. Albee, No. 165,973, granted and dated July 27, 1875.

(8.) United States patent to P. B. Horton, No. 160,196, granted and dated February 23, 1875.

(9.) United States patent to P. B. Horton, No. 174,125, granted and dated February 29, 1876.

(10.) United States patent to J. T. Gathright and James C. Watson, No. 183,153, granted and dated October 10, 1876.

(11.) United States patent to Walter H. Jenifer, 28867, granted and dated June 26, 1860.

X. These respondents further answer upon knowledge and say that they have never made or sold a saddle as a "Whitman" saddle which was not made upon a "Whitman" saddle-tree (the form of which determines the form of the saddle made thereon) lawfully procured from a party having right to make and sell such saddle-trees under said Whitman's patent, which these respondents protest is nevertheless null and void.

XI. These respondents, further answering, upon information and belief aver that said design letters patent No. 10844 are null and void because that the design described and claimed therein and all the material and substantial parts thereof were in public use and on sale in this country for more than two years prior to the date at which application was made for said design patent last mentioned, and said public use and sale was had by and was known to the same persons who in paragraph or section "VII" of this answer are stated as having knowledge of said design prior the alleged invention

23 thereof by Royal E. Whitman, and the places of such public use and sale are as stated in said paragraph or section "VII" and the residences of said "persons" last mentioned are as stated in said paragraph or section VII.

And these respondents deny that there is any other matter, cause, or thing in the said bill of complaint contained (material or necessary to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied) true to the knowledge or belief of these respondents; all which matters and things these respondents are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly

prays to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WM. EDGAR SIMONDS,
Respondents' Solicitor.

STATE OF CONNECTICUT, } ss:
County of Hartford, }

Benjamin A. Bourn, one of the above-named respondents, being duly sworn, doth depose and say that he has read the foregoing answer, and that the same is true of his own knowledge except as to those things stated therein upon information and belief, and as to those matters he believes it to be true.

Subscribed and sworn to before me this 3rd day of January, A. D. 1887.

A. B. JENKINS,
[SEAL.] *Notary Public.*

And on the 7th day of February, 1887, complainant's replication was filed in the words and figures following, viz:

24 *The Replication of Complainant to the Answer of Defendants.*

This repliant, saving and reserving unto itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that it will aver, maintain, and prove its said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

Feb. 7, 1887.

DUNCAN, CURTIS & PAGE,
Complainant's Solicitors, 32 Park Place, N. Y. City.

And on the 11th day of February, 1887, amendment to answer was filed in the words and figures following, viz:

25 United States Circuit Court, District of Connecticut. In Equity.

THE WHITMAN SADDLE COMPANY
vs.
SMITH, BOURN & COMPANY.

Amendment to Answer.

Respondents' answer is hereby amended by inserting after the mention of the name of Mr. Harrison the following:

Henry Ruwart, of Jefferson City, in the State of Missouri, at said Jefferson City.

Jacob Straus, of the city of St. Louis, in the State of Missouri, at said St. Louis.

James F. Labadie, of said St. Louis and at said St. Louis.

Wm. Mulhauser, of and at said St. Louis.

J. J. Kreher, of and at said St. Louis.

J. Ross Appler, of and at said St. Louis.

B. F. Williamson, of and at said St. Louis.

John Shelby, of and at said St. Louis.

—— Lipp, of and at said St. Louis.

W. W. Millar, of Cincinnati, Ohio, at said Cincinnati.

Samuel Hatheral, of and at said Cincinnati.

Dated February 9th, 1887.

Agreed to.

DUNCAN, CURTIS & PAGE,
Compl't's Solicitors.

And on the 7th day of March, 1887, replication to amendment to answer was filed in the words and figures following, viz:

26 Circuit Court of the United States, District of Connecticut.

WHITMAN SADDLE COMPANY
vs.
CHARLES B. SMITH *et als.* } In Equity.

The Replication of —— ——, Complainant, to the Amended Answer of —— ——, Defendants.

This repliant, saving and reserving unto itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said amended answer, for replication thereunto says that it will aver, maintain, and prove its said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said amended answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said amended answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto confessed or avoided,

traversed or denied, is true; all which matters and things this repliant — and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

DUNCAN, CURTIS & PAGE,
Complainant's Solicitors.

And on the 1st day of April, 1887, motion as to completing evidence and order for hearing thereon were filed in the words and figures following, viz:

27 United States Circuit Court, District of Connecticut. In Equity.

THE WHITMAN SADDLE COMPANY
vs.
SMITH, BOURN & COMPANY.

Motion.

Now come said respondents, by their counsel, and move the court to set times wherein said parties shall respectively take and file their evidence.

WM. EDGAR SIMONDS,
Sol'r for and of Counsel with said Respondents.

Dated April 1, 1887.

Order.

This motion will be heard at the judge's chambers, Hartford, April 9, 1887, at 12 m., or as soon thereafter as counsel can be heard; service to be made by copy in registered letter mailed this day.

N. SHIPMAN,
District Judge.

Dated April 1, 1887.

(Registered letter receipts.)

And on the 25th day of April, 1887, order as to time for taking testimony was filed in the words and figures following, viz:

28 United States Circuit Court, District of Connecticut. In Equity.

THE WHITMAN SADDLE COMPANY
vs.
SMITH, BOURN & COMPANY.

Order.

It is ordered that complainant have till May 20, 1887, to make a *prima facie* case; that respondents have till July 10, 1887, to take

answering testimony, and that complainant have till August 15, 1887, to take rebuttal testimony.

Dated April 25, 1887.

N. SHIPMAN,
District Judge.

And on the 16th day of May, 1888, complainant's evidence was filed in the words and figures following, viz:

29 United States Circuit Court, District of Connecticut.

WHITMAN SADDLE COMPANY
v.
CHARLES B. SMITH *et al.* } In Equity.

Testimony taken on behalf of the complainant under the 67th rule in equity of the Supreme Court, as amended, pursuant to the annexed notice.

Present: D. G. Haskins, Jr., Esq., on behalf of complainant; William E. Simonds, Esq., on behalf of respondents.

Taken at 85 Devonshire street, Boston, Mass., Saturday, May 14 1887, before Arthur B. Clapp, notary public, by agreement of parties.

Deposition of Henry A. Winship.

BOSTON, *May* 14, 1887.

Direct examination by D. G. HASKINS, Jr., Esq., on behalf of complainant.

Int. 1. What is your name, place of business, and occupation?

Ans. Henry A. Winship; 16 Tremont street, Boston; manufacturer of leather goods.

30 Int. 2. Do you deal in saddles?

Ans. Yes.

Int. 3. Are you acquainted with the Whitman saddles?

Ans. To some considerable extent.

Int. 4. Have you dealt in the same?

Ans. Yes, sir.

Int. 5. State any persons to whom you have sold Whitman saddles

Ans. I name Gen. Sutton and different ones of Wales' and Bancroft's staffs.

Int. 6. Have you sold saddles to the police department of Boston?

Ans. Yes, sir.

Int. 7. Will you examine this saddle?

(Saddle introduced by complainant and marked "Complainant's Exhibit A," A. B. C., N. P.)

Ans. I think this one I sold the police department of Boston.

Int. 8. Did you sell certain saddles to police department of Boston in the year 1886?

Ans. I think I did. I have for a number of years.

Int. 23. And the saddles bought by you in 1886 from Ordway, Kimball & Loring, were they similar to Exhibit A?

(Same objection.)

Ans. Yes.

Int. 24. Have you any other bills of saddles from Ordway, Kimball & Loring in the year 1886?

(Same objection.)

Ans. Not to my knowledge. I usually destroy bills at end of month on obtaining receipted statement.

32 Int. 25. What kinds of saddles did you buy from Ordway, Kimball & Loring in the year 1886?

(Same objection.)

Ans. Side saddles, English saddles—different kinds.

Int. 26. Did you buy in 1886, from Ordway, Kimball & Loring, saddles similiar to Exhibit A?

(Same objection.)

Ans. Yes, sir.

Int. 27. By what name did you order such saddles?

(Same objection.)

Ans. Whitman.

Int. 28. Did you believe the saddles bought by you in 1886 of Ordway, Kimball & Loring to be genuine Whitman saddles?

(Same objection.)

Ans. Yes; made on a Whitman tree. I have had trees direct from Whitman and made the saddles myself. That is what I suppose those bought in 1886 from Ordway, Kimball & Loring were.

Int. 29. By what name did you sell to the police department in 1886 the saddles you bought of Ordway, Kimball & Loring?

(Same objection.)

Ans. I don't know that I billed them as Whitman saddles, but I represented them and sold them as Whitman saddles.

Int. 30. Was there any mark or point of difference by which you can distinguish saddles sold by you to the police in 1886 from saddles sold to other parties.

Ans. None.

Int. 31. Is there anything in this saddle (Exhibit A) by which you can identify it as to whom it was sold to?

Ans. None; though, I think, to the police department.

Int. 32. What became of the saddles sold by you in 1886 to the police department?

Ans. A part were returned on account of hurting the horses.

Int. 33. Was this Exhibit A so returned?

Ans. I think so, but am not sure.

Int. 34. From whom else except Ordway, Kimball & Loring did you buy saddles in 1886?

Ans. Miller, Morrison & Co. and I think from Whitman; am not sure.

(Question and answer objected to as irrelevant and immaterial.)

33 Int. 35. Have you any idea you bought Exhibit A from Miller, Morrison & Co.?

(Same objection.)

Ans. I don't know; think not.

Int. 36. Did you buy it from the Whitman Co.?

(Same objection.)

Ans. No.

Int. 37. Were there any other parties from whom you bought saddles in 1886?

Ans. Not of this kind (Exhibit A) that I remember.

Int. 38. From whom besides Ordway, Kimball & Loring did you obtain saddles sold by you to the police in 1886?

Ans. I think from Miller, Morrison.

(Question and answer objected to as immaterial and irrelevant.)

Int. 39. Was there any one else?

Ans. Not to my recollection.

Int. 40. Were the saddles bought by you of Miller, Morrison & Co. in 1886 similar to Exhibit A?

(Same objection.)

Ans. In general appearance the same.

Int. 41. Could you distinguish between them and the saddles from Ordway, Kimball & Loring?

(Same objection.)

Ans. I think I might on seeing the two together.

Int. 42. Will you examine Exhibit A closely and see whether it resembles those from Miller, Morrison & Co.?

Ans. These saddles all resemble one another.

Int. 43. Please say, from examination, whether this saddle resembles more those from Miller, Morrison & Co. or those from Ordway, Kimball & Loring.

(Same objection.)

Ans. I should think from Ordway, Kimball & Loring.

Int. 44. Do you know how long this saddle has been in your store?

Ans. No; but not over a year.

Int. 45. Have you any other saddles similar now in your store?

Ans. I have.

Int. 46. Are you certain you have some of the saddles returned by the police department now in your store?

34 Ans. Yes, sir.

Int. 47. How many similar to Exhibit A have you now in your store?

Ans. I think from six to twelve.

Int. 48. How many of those were returned by the police?

Ans. Quite a number; cannot tell just how many.

Int. 49. Please say whether this saddle has been used.

Ans. It has.

Int. 50. Do you recognize it as one that has been sold by you?

Ans. I have no doubt but what it is.

Int. 51. If so, by whom except the police can it have been returned?

Ans. I keep a stock on hand I let for parade occasions.

Int. 52. Are those saddles you keep to let fresh saddles?

Ans. No, sir; not all.

Int. 53. Have you any doubt whether this was sold by you to the police department?

Ans. I have no doubt.

Int. 54. And that it was returned by them to you?

Ans. No, sir.

Int. 55. Have you any doubt as between Ordway, Kimball & Loring and Miller, Morrison & Co., from whom you obtained the saddle?

(Same objection.)

Ans. Could not state positive; think I obtained it from Ordway, Kimball & Loring.

Int. 56. Is there any similar saddle now in your store of which you are more positive?

(Same objection.)

Ans. I am not quite clear, but think there is one which I could more definitely identify.

(Adjourned to 1.30 p. m.)

1.30 P. M.

Int. 57. Will you examine this saddle and say whether you recognize it?

35 (Complainants offer in evidence saddle, which is marked "Complainant's Exhibit C, A. B. C., N. P.")

Ans. Yes.

Int. 58. Please state what you know about it, as from whom you bought it.

Ans. To the best of my knowledge and belief, of Ordway, Kimball & Loring.

Int. 59. Do you know when you bought it?

Ans. I couldn't name the date, but within a year.

Int. 60. Was this one sold by you to the police?

Ans. It was.

Int. 61. Was it sold by you in the year 1886?
Ans. Yes.
Int. 62. Was it sold by you as a Whitman saddle?
Ans. It was, and I believed it was.
Int. 63. Did you buy it as a Whitman saddle?
Ans. I think I did.

Cross-examination by W. E. SIMONDS, on behalf of respondent:

X Int. 1. What is the name of your business concern?
Ans. H. A. Winship.
X Int. 2. How long have you been a dealer in saddles?
Ans. Thirty or forty years.
X Int. 3. How long have you been a maker of saddles?
Ans. As many years, or less.
X Int. 4. How many different varieties of saddles are sold?
Ans. It is a difficult question to answer; an endless variety.
X Int. 5. Have you been accustomed to alter their shapes to suit the tastes and whims of your customers?
Ans. Not so much as to fit their horses.
X Int. 6. What is the difference between the rear half of these two saddles, Complainant's Exhibits A and C, and the rear half of a Jenifer saddle?

(Objected to as irrelevant.)

Ans. Very little; they are very similar in style.
X Int. 7. What is the difference between the front half of these two saddles, Complainant's Exhibits A and C, and the front half of a Granger saddle?

(Same objection.)

36 Ans. I don't know exactly what you mean by a Granger.
X Int. 8. Please look at the photograph I now show you—that is, at the figure at the right, and in understanding that figure please remember that the pommel on its rear side falls nearly perpendicularly for some inches—and then tell me whether you would recognize any difference between the saddles shown in that figure and these two saddles, Complainant's Exhibit A and C.

(Objected to as immaterial and irrelevant.)

Ans. None in the tree.
X Int. 9. Would you in the saddles?

(Same objection.)

Ans. One has skirts and the other hasn't.
X Int. 10. Never mind the skirts and jockeys. In your view of the matter, in the two saddles Exhibits A and C does the pommel on its rear side fall nearly perpendicularly for some inches?

(Objected to as immaterial.)

Ans. No.

X Int. 11. Do you know what a Muley tree is?

Ans. Not by that name.

X Int. 12. And you don't know what a Granger tree is?

Ans. Not by that name.

X Int. 13. As regards the front half or part of Exhibits A and C, what is there new about them as compared with the front halves or parts of saddles you sold fifteen or twenty years ago?

(Objected to as immaterial and irrelevant.)

Ans. These are the nearest approach to a Jenifer of anything I know of.

X Int. 14. How, if *it* all, do they differ from a Jenifer?

(Same objection.)

Ans. I think these are a little wider on the throat, but not much different.

X Int. 15. How old is the Jenifer in the trade?

(Same objection.)

Ans. It first made its appearance during the war. The first I saw of it was about 1862 or 1863.

X Int. 16. Did that Jenifer saddle of 1862–'3 have the tail or cantle at the rear part?

(Same objection.)

37 Ans. It did.

X Int. 17. How many different kinds of saddle-trees have you in stock?

Ans. I have not many trees, but a number of saddles.

(The photograph which was shown the witness is marked on the back Respondents' Identification Exhibit No. 1, A. B. C., N. P.)

HENRY A. WINSHIP.

Attest: ARTHUR B. CLAPP,
[SEAL.] *Notary Public.*

Deposition of George B. Loring.

BOSTON, *May* 14, 1887.

Direct examination by D. G. HASKINS, JR., Esq., on behalf of complainants:

Int. 1. What is your name, occupation, and place of business?

Ans. George B. Loring; dealer in saddlery hardware, 60 Franklin street, Boston; member of firm of Ordway, Kimball & Loring.

Int. 2. Are you acquainted with the Whitman saddles?

Ans. I am.

Int. 3. Have you dealt in them?

Ans. I have.

Int. 4. Whether you bought or sold Whitman saddles during 1886.

Ans. I have.

Int. 5. Will you examine the saddles marked "Complainant's Exhibits A and C" and see whether you identify them?

Ans. I can't say those are the identical saddles, but I have sold saddles I could not tell the difference from these.

Int. 6. Whether you sold saddles in 1886 to H. A. Winship.

Ans. Yes.

Int. 7. What kind of saddles did you sell him?

38 Ans. We sold him English and gentlemen's and ladies' saddles.

Int. 8. Did you sell him saddles resembling these Exhibits A and C?

Ans. We did.

Int. 9. Will you examine Complainant's Exhibit B and say if this bill was made by your firm?

Ans. It was.

Int. 10. What kind of saddles were those in the bill?

Ans. Saddles that have the same appearance as Exhibits A and C.

Int. 11. How many saddles similar to these exhibits did you sell to Winship in 1886?

Ans. Nine.

Int. 12. Do you believe these two exhibits are two of those nine?

(Objected to as leading.)

Ans. I should think they were.

Int. 13. Whether or not you can detect any difference between these exhibits and the nine you sold Winship.

Ans. No; there is nothing.

Int. 14. Can you fix the dates when you sold the nine saddles to Winship?

Ans. Yes; June 2d, one; June 8th, one; June 10th, one; July 9th, three; July 15th, one; July 16th, two; all in 1886.

Int. 15. Where did you obtain these nine saddles?

Ans. Seven from Smith, Bourn & Co.; two from The Whitman Saddle Co., the complainant.

Int. 16. Can you give the dates when you bought the nine?

Ans. April 1, saddle, May 2, June 3, and July 5, '86, from Smith, Bourn & Co. From Whitman Saddle Co., June 7th, 1 saddle, and July 14th, 1 saddle. Those eleven from Smith, Bourn & Co. were all we bought of this style of saddle from them. Two of the nine sold Winship came from Whitman Saddle Co. and the other seven from Smith, Bourn & Co.?

Int. 17. At what date did you sell Winship the two saddles from the Whitman Co.

Ans. One June 8th and one July 15th, 1886.

Int. 18. Were all the eleven from Smith, Bourn & Co. of one kind?

Ans. They were.

39 Int. 19. Did they resemble the genuine Whitman saddle?

Ans. Yes, sir.

Int. 20. Under what name did you sell them to Winship?

Ans. They were sold as Whitman.

Cross-examination by W. E. SIMONDS, Esq., on behalf of respondents:

X Int. 1. How many saddles having different features of construction are known as Whitman saddles?

Ans. Of genuine Whitman I know of only ladies' and gentlemen's and some with and some without the extension on the cantle.

X Int. 2. Were the two saddles you bought of Whitman Co. stamped with their name or mark?

Ans. I didn't examine and couldn't say.

X Int. 3. Whenever you have examined the genuine Whitman have they had any mark?

Ans. I do not know, as I have never had any occasion to look for it.

X Int. 4. Did you never see on a genuine Whitman saddle any mark or stamp of the Whitman Co.?

Ans. I think the sample saddles they sold me this spring had a mark on.

X Int. 5. Did the saddles from Smith, Bourn & Co. bear any such mark?

Ans. No, sir; not to my knowledge.

X Int. 6. Will you state positively that either of the saddles Exhibits A and C was bought by you or your concern from Smith, Bourn & Co.?

Ans. I can't say positively; that is impossible.

X Int. 7. In ordering from Smith, Bourn & Co. the saddles you testify to-day you had from them, did you order Whitman saddles?

Ans. I can't say Whitman. I think we ordered black saddles. I have not looked it up.

X Int. 8. Were they billed to you by Smith, Bourn & Co. as Whitman saddles?

Ans. They were not.

X Int. 9. Did they bill them to you as Park saddles?

40 Ans. I think they were billed O., K. & L., not Park.

X Int. 10. How long have you been a dealer in saddles?

Ans. About twenty-five years.

X Int. 11. How many different kinds of saddles have you dealt in?

Ans. I couldn't give the number; there are a great many styles.

X Int. 12. More than one hundred?

Ans. I should think less. I suppose you have reference to the style of trees.

X Int. 13. What substantial difference do you see between the rear half of saddles, Exhibits A and C, and the rear half of a Jenifer saddle?

(Objected to as immaterial and irrelevant.)

Ans. I don't know a Jenifer by that name.

X Int. 14. What substantial difference do you see between the

rear half of saddles, Exhibits A and C, and the rear half of a McClellan saddle?

(Same objection.)

Ans. As I remember the McClellan I don't see any difference, except the extension on the cantle.

X Int. 15. How old is the McClellan to the trade, to your knowledge?

(Same objection.)

Ans. About twenty-five years.

X Int. 16. How old is such an extension on the cantle to the trade, to your knowledge?

(Same objection.)

Ans. I should think about twelve years.

X Int. 17. Are you acquainted with the Granger saddle?

Ans. Not by that name.

X Int. 18. Will you look at the cut of a Granger saddle in the little book I now hand you and say what substantial difference, if any, there would be between a saddle made up on that tree and these saddles, Exhibits A and C?

(Objected to as irrelevant and immaterial.)

Ans. As near as I could tell from the cut, all the difference I see is the extension on the cantle.

(Book marked for identification Complainant's Identification Exhibit No. 2, A. B. C., N. P.)

41 X Int. 19. Is there or not any substantial difference in the front half of Exhibits A and C as compared with the like half of saddles known to you in the trade fifteen or sixteen years ago?

(Same objection.)

Ans. There were saddles very similar to these at that time.

X Int. 20. Look at the saddle shown in the right-hand figure in Respondents' Identification Exhibit No. 1, and bear in mind that in that saddle the pummel on its rear side falls nearly perpendicularly for some inches. Do you find such an appearance or construction in Exhibit C?

(Same objection.)

Ans. As near as I can judge from the cut, they have the same appearance.

X Int. 21. And do you find that Exhibits A and C present the appearance of having the pommel on the rear side fall nearly perpendicularly for some inches before it joins the line which forms the curve of the seat?

(Same objection.)

Ans. It did, I should say.

(Redirect examination :)

Int. 21. Do you consider yourself an expert on saddles?
Ans. I do not.

GEORGE B. LORING.

Attest: ARTHUR B. CLAPP,
[SEAL.] *Notary Public.*

42 *Notice of Examination.*

Circuit Court of the United States for the District of Connecticut.

WHITMAN SADDLE COMPANY
v.
CHARLES B. SMITH *et al.* } In Equity.

The defendants will take notice that the complainant will examine orally witnesses in the above-named cause under the 67th rule in equity, as amended, before a notary public, at the office of D. G. Haskins, Esquire, No. 85 Devonshire street, in the city of Boston, Massachusetts, on Saturday, the fourteenth day of May, 1887, beginning said examination at nine o'clock a. m. of said day and continuing from day to day until completed.

DUNCAN, CURTISS & PAGE,
Solicitors for Complainant.

STATE OF MASSACHUSETTS, *Suffolk*, } *ss:*

I, Arthur B. Clapp, a notary public within and for said county of Suffolk, do hereby certify that the foregoing depositions of Henry A. Winship and George B. Loring were taken on behalf of the complainant in the cause of The Whitman Saddle Company *v.* Charles B. Smith *et al.*, in pursuance of the notice hereto annexed, before me, at 85 Devonshire street, Boston, in said county, on the 14th day of May, 1887; that each of said witnesses *were* by me duly sworn before the commencement of *their* testimony; that the testimony of each of said witnesses was written out by myself; that the opposite party was present during the taking of said testimony by their attorney, Wm. E. Simonds, Esq.

I further certify that I am not counsel to either party nor in any way interested in the event of said cause.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at Boston aforesaid, this 14th day of May, A. D. 1887.

ARTHUR B. CLAPP,
[L. S.] *Notary Public.*

43 United States Circuit Court for the District of Connecticut.

WHITMAN SADDLE COMPANY
vs.
CHARLES B. SMITH *et al.* } In Equity.

NEW YORK, *May* 26, 1887.

Testimony taken on behalf of complainants for final hearing, pursuant to the 67th rule of the U. S. Supreme Court, in equity, as amended, before William T. Farnham, notary public in and for the county and State of New York and special examiner herein by consent.

Present: R. H. Duncan, Esq., for complainant, and W. E. Simonds, Esq., for defendant-.

It is hereby stipulated and agreed that complainant's proofs herein for final hearing may be taken before William T. Farnham, of the city of New York, notary public, with the same force and effect as if an order appointing him special examiner had been duly entered.

Counsel for complainant states that he had arranged to complete his testimony in this case on the 20th inst.; that on the 19th
44 inst. he was notified that the counsel for defendants was unwell and desired the taking of the balance of complainant's proofs to be postponed until the earliest day at which counsel for both parties and complainant's witnesses could attend, and that the present, the 26th inst., is such day.

Counsel for complainant offers in evidence a certified copy of the incorporation of the complainant, Whitman Saddle Company, and the same is marked Complainant's Exhibit, "Certified Copy of the Incorporation of Complainant, May 26, 1887."

Counsel for complainant offers in evidence a Patent Office copy of letters patent for design No. 10844, granted Royal E. Whitman Sept. 24, 1878, for design for saddles, and the same is marked "Complainant's Exhibit Whitman Patent, May 26, 1887."

Counsel for defendants agrees that the certification of the said copy may be waived, and that the same may be used in this case with the same force and effect as if certified.

Counsel for complainant offers in evidence a certified copy of an assignment from the Patent Office from Royal E. Whitman to the complainant corporation, including the patent, 10844 in suit, and the same is marked "Complainant's Exhibit Assignment, May 26, 1887."

HENRY F. NEWBURY, being duly called and sworn on behalf of complainant, testifies as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. Henry F. Newbury; 45 years of age; I reside at 126 Calyer street, Brooklyn; I am by trade a machinist and am at present engaged as manager of the time-lock department of the Holmes'

Burglar Alarm Telegraph Company, whose principal office is at 518 Broadway, New York city.

Int. 2. State what opportunities you have had of becoming familiar with patentable inventions generally and with letters patent granted therefor.

Ans. For the past ten years I have been engaged with the Holmes Company aforesaid, and during nearly all that time have had active charge of all matters pertaining to letters patent and patented
45 inventions in which said company was interested. I have read the specifications and drawings of letters patent, both U. S. and foreign. These letters patent related to different arts and were quite large in number. I have had granted to me about twenty-five letters patent on inventions of my own. I have been called upon to testify as an expert in the U. S. courts relating to letters patent in various arts.

Int. 3. Have you read the specification and examined the accompanying photographic drawing of letters patent No. 10844, granted Royal E. Whitman Sept. 24, 1878, for design for a saddle; and, if so, do you understand the same?

Ans. I have frequently read the specification and examined the drawing inquired about and believe that I understand the same.

Int. 4. State what you understand to be the design which is described and claimed in the said patent.

(Objected to as incompetent and immaterial.)

Ans. The design, as I understand, relates generally to that portion of the saddle above the lower line of the tree. The design, as I understand the same, is for the curves and lines applied to a saddle, and is well stated in the paragraph of the specification preceding the claim, where it says, "The lines I employ to give the profile form a new design for saddles, and giving the general idea in the front, lower, and rear lines of a sea-fowl or vessel modeled on the same curves, and by these curves and lines giving the impression of lightness, grace, and comfort that could not as well be conveyed by any others, as the impression of comfort is given by the large amount of bearing surface obtained without undue elevation above the back of the animal, combined with the large seat for the rider and lightness and grace by the small surface of tree shown in vertical plan coupled with the form in which it is presented." The appearance of the design as a whole suggests to the beholder a swan-like movement and the idea or image of a graceful and easy motion for the horse and rider.

The design as a whole is harmonious and symmetrical and produces an effect to the eye which is pleasing, owing to the fact that the lines of the design, in a measure, approach the lines of the horse, and also because the apparent length of seat gives the idea of comfort to the rider, as during the ordinary movements of the animal the body of the rider will not be brought into contact with the pommel in front or the cantle in the rear, and the ap-
46 parent depth of the seat gives the idea that, should the horse stumble, the pommel will prevent the rider from being

pitched forward over it and onto the neck of the horse, or, should the horse suddenly jump or spring forward, the body of the rider would not pass over the cantle onto the haunches of the horse and thus endanger the position of the rider. The apparent narrowness of the tree or saddle at the point where the legs of the rider grasp or grip the body of the animal gives the idea of security of position to the rider, as well as of comfort, as the legs of the rider can the more readily and securely grip the body of the animal, owing to the small extent to which they are extended near their juncture with the body of the rider.

Int. 5. You have spoken of ideas of comfort and ease to the rider and horse suggested by the appearance of the saddle of the said Whitman design patent. State whether there are any real benefits or advantages to the rider or horse arising from the design of the said patent when compared with the forms or configurations of saddles known to or understood by you to have been in use prior to the date of the said Whitman design; and, if you shall answer affirmatively, state what such advantages or benefits are.

(Objected to as immaterial and incompetent.)

Ans. Yes; as I understand the matter there are real benefits or advantages to both the rider and the horse arising from the design of the said patent over any of the forms or configurations of saddles which I understand to have been known prior to the date of the said Whitman design.

The length of the seat, which enables the rider during the ordinary motions of the animal to remain nearly over the centre of the saddle and with his body out of contact with either the pommel in the front or the cantle in the rear, is a real advantage or benefit.

The depth of the seat would prevent the rider from being thrown forward onto the neck of the horse should the horse stumble, as well as prevent the rider from being thrown onto the haunches of the horse by passing over the cantle should the horse suddenly spring or jump forward is also a real benefit or advantage. The narrowness of the seat at the point where the legs of the rider grasp or grip the body of the horse enables the rider more readily and firmly to grip the body of the horse and is a real benefit or advantage.

47 The length of the seat not only tends to the comfort and ease of the rider, but also to that of the horse, owing to the fact that the body of the rider during the ordinary motions of the horse is out of contact with the pommel in front or the cantle in the rear, and the weight of the rider rests more nearly over the centre of the saddle without bearing upon the pommel in front or the cantle in the rear, which would tend to lift the saddle at its opposite end, and where so lifted putting an extra strain upon the girth, which necessarily embraces the horse tightly, and such extra strain would tend to irritate the horse, and the less the weight of the rider be thrown against the cantle or pommel the less the strain upon the girth and the greater the comfort of the horse.

Int. 6. Examine the two saddles now shown you, marked Complainant's Exhibits A and C respectively, and compare the same

with the design described, shown, and claimed in Complainant's Exhibit Whitman Patent, and state whether the said saddles contain the design described, shown, and claimed in the said patent, and give reasons for your answer.

(Objected to as incompetent.)

Ans. I have examined the two saddles inquired about and compared them with the design of the said Exhibit Whitman Patent, and find that they contain the design described, shown, and claimed in said Whitman patent, because they produce on my mind substantially the same effect as is done by the said Whitman design, and they produce the same pleasing appearance to my eye that is done by the said Whitman design, and all three are to my perception one and the same.

Int. 7. State what experience you have had of a practical nature in the manufacture, sale, or use of saddles for equestrian use.

Ans. I have had no experience whatever in the manufacture and sale of saddles and but a very limited experience as to their use, and what little might have been took place while I was a boy.

(Counsel for complainant offers in evidence two saddles, one of which is marked Complainant's Exhibit D and the other is marked Complainant's Exhibit E, May 26, 1887.)

Int. 8. Examine the two saddles now shown you, marked Complainant's Exhibits D and E respectively, and compare the same with Complainant's Exhibit Whitman Patent, and state
48 whether each of the said saddles contains the design described and claimed in said patent.

(Objected to as incompetent.)

Ans. I have examined the saddles inquired about and compared them with the said Exhibit Whitman Patent, and find that they contain the design described, shown, and claimed in said Exhibit Whitman Patent.

Counsel for defendant- stipulates that Complainant's Exhibit A is a saddle sold by the defendants during the year 1886.

Cross-examination by Mr. SIMONDS:

X Int. 9. I show you a drawing of a saddle which I suppose to be a correct enlargement of figure 1 of the patent in suit. Is there or is there not any difference which you would readily notice between the saddle illustrated in the drawing which I show you and the two saddles Complainant's Exhibits A and C? You need not take flaps and straps into consideration.

(Objected to on the ground that the drawing of the patent is or appears to be a photographic view and is shaded, whereas the drawing shown the witness is simply an outline without shading and liable to produce a very different impression upon the eye of the beholder.)

Ans. I do not find any material difference, so far as the effect pro-

duced on my mind is concerned, between the said drawing and the said exhibits, and am unable to readily point out any difference without measurements of the various parts.

X Int. 10. Then you do not readily notice any difference. Is that so?

Ans. There may be a slight difference in some parts or portions of the curves which I might point out, but they are so slight that they would not be noticeable unless closely compared one with the other and both being present during the comparison.

(Said drawing is marked Respondents' Identification Exhibit No. 3, May 26, 1887.)

X Int. 11. You notice that the patent in suit says: "The pommel on its rear side falls nearly perpendicular for some inches
49 where it is joined by the line forming the profile of the seat." Now, as regards the configuration there referred to, do you or do you not readily notice any difference between the saddle of the drawing I show you and the saddles Complainant's Exhibits A and C?

Ans. I notice that the saddle does not, at the point which I understand to be referred to in the question, viz., the point which I will now mark with the letter X and my initials on the drawing, apparently fall in as nearly a perpendicular line as does the drawing at that point, nor does it seem to extend quite as far. In the saddle A the line seems to fall in the direction as nearly perpendicular as is the line in the drawing, but does not fall as far as the corresponding line does in the drawing.

X Int. 12. Did you notice the difference specified in your last answer before I asked the last question?

Ans. Yes; as I had my attention called to them.

X Int. 13. Then was your answer to the 9th cross-question a conclusion of law—a conclusion of fact or a conclusion of mixed law and fact. Which of these was it?

(Objected to as matter belonging to the court alone.)

Ans. I can hardly say which, but probably more of the latter than either of the former.

X Int. 14. At any rate, in your present mental attitude, do you consider the difference to which your attention has been called immaterial and unsubstantial?

Ans. I do.

X Int. 15. Are you certain that you ever bought a saddle in your life?

Ans. I have no recollection of ever purchasing one.

X Int. 16. Did you ever learn to ride horseback?

Ans. I am unable to understand what the question is intended to inquire about; if it is intended whether I have ever ridden on horseback at all or sufficiently to enable me to ride about my father's farm and from place to place as I might be called upon when a boy, I would answer yes; but if it was intended to inquire whether I had

ever taken lessons or had ridden sufficiently to become an expert rider I should answer no.

X Int. 17. Have you ridden since you were a boy on your father's farm?

50 Ans. I may have done so, but I have no recollection of so doing.

X Int. 18. How old were you when you thus rode as a boy?

Ans. About as young in age as I can remember up to, maybe, my nineteenth year.

X Int. 19. Did you use a saddle in thus riding as a boy?

Ans. Sometimes, yes; more generally, no.

X Int. 20. What kind of a saddle?

Ans. I don't know as I can state what kind it was, except that it was a padded one and had flaps.

Redirect examination:

R. D. Int. 21. You were asked in cross-question 14 whether, in your present mental attitude, you consider the difference to which your attention was called in preceding questions as immaterial and unsubstantial, that difference being, as I understand it, a difference between the drawing marked for identification No. 3 and the Complainant's Exhibits A and C in the matter of the shape back of the pommels, and you answered, "I do." Please give the reason or reasons for your answer.

Ans. The appearance of the design, taken as a whole, is such that, in first looking at the saddle, that difference was not apparent to me, and I can only distinguish it by comparing the saddles and the design at that particular point, having both the saddles and the design before me while making the comparison, and for this reason I deemed it an immaterial and unsubstantial difference, because it did not produce such an effect upon my eye as would enable me to distinguish the exhibits from the design, and therefore I do not think it such a difference that it could be readily carried in the eye by the ordinary observer from place to place.

(Question and answer objected to as incompetent.)

HENRY F. NEWBURY.

51 HENRY L. BUCK, being called on behalf of complainant and duly sworn, testifies as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. Henry L. Buck; 35 years of age; I reside at Newark, New Jersey; I am president of the Whitman Saddle Company.

Int. 2. How long have you been connected with the Whitman Saddle Company?

Ans. Since 1880; as president since then.

Int. 3. What is the main business of said Whitman Saddle Co.?

Ans. The manufacture and sale of saddles under the patents secured by R. E. Whitman and of other riding equipments.

Int. 4. When was the Whitman Saddle Co. organized?

Ans. In 1880; about May, 1880.

Int. 5. Before the organization of this company had saddles containing the inventions of R. E. Whitman been manufactured and put upon the market, to your knowledge?

Ans. They had.

Int. 6. Were they manufactured under any special patent and were they marked with the date of any special patent; and, if so, what patent?

Ans. They were; largely under patent 10844, for design, dated September 24, 1878.

Int. 7. Did you have personal knowledge of Mr. Whitman's manufacture and sale of such saddles? If so, how did you obtain it?

Ans. I did from personal contact with Colonel Whitman, from a general knowledge of his business; from the opinions of experts, especially that of Maj. Gen. Torbert.

(So much of this answer as relates to matters of hearsay is objected to for that reason.)

Int. 8. When did Mr. R. E. Whitman begin to manufacture and sell the saddles of the design of patent No. 10844, and how long did he continue to do this?

Ans. He commenced in the latter part of 1878 and continued until spring of 1880.

Int. 9. Were you intimate with him and his business during these years; and, if so, how came it about?

Ans. I was, being located in the same building as he and seeing him frequently in his office and in mine.

52 Int. 10. What disposition did he make of his business in May, 1880?

Ans. He sold and conveyed his patents, good will, trade-marks, merchandise, and other business property to the Whitman Saddle Company, and that included everything relating to saddles and equipments generally.

Int. 11. After this sale what did the Whitman Company do?

Ans. It proceeded to carry on the business of manufacturing and selling saddles under the Whitman patents on a much larger scale.

Int. 12. What have been personally your duties and occupation in connection with the manufacture and sale of saddles for the said company?

Ans. I have attended to both the manufacture and sale of the articles manufactured.

Int. 13. From 1880, when the Whitman Saddle Company was organized, up to the present time, has said company manufactured or put upon the market saddles made under patent for design No. 10844, like that shown in Complainant's Exhibit Whitman Patent now shown you?

Ans. It has.

Int. 14. How have they been marked, if at all?

Ans. Whitman patent, September 24, 1878.

Int. 15. Can you state about how many saddles containing the

said patented design have been sold by the said Whitman Company?

Ans. About two thousand five hundred.

Int. 16. Look at the two saddles marked Complainant's Exhibits D and E and state by whom they were made and under what patent.

Ans. By the Whitman Saddle Co., under patent No. 10844 for design. One is so marked and the other has had the mark taken off.

Int. 17. How do these two exhibits compare in shape (referring now to the parts of the saddles above the lower line of the saddle-tree) with the saddles which said company has made and sold under said patent No. 10844?

Ans. The conformation is the same.

Int. 18. To what extent have you been brought in contact with purchasers of saddles, and what opportunities have you had for finding out in what estimation saddles containing the design of said patent 10844 have been held by purchasers and users?

53 Ans. I have been brought in contact with purchasers daily and have had full opportunity of learning their opinions.

Int. 19. How have they been regarded by users, according to their statements to you?

(Objected to as incompetent and immaterial.)

Ans. Very favorably.

Int. 20. If they have given reasons for this favorable opinion of the saddles, you may state them generally if you can recollect them.

(Same objections.)

Ans. Their reasons for this favorable opinion have been by reason of the lines of beauty, grace, harmony, and lightness, which have given incidentally comfort to both themselves as riders and to their horses.

Int. 21. Has your company received any testimonial letters or certificates relating to these saddles?

(Same objections.)

Ans. It has—many.

Int. 22. Can you produce any of them? If so, please do so.

(Same objections.)

Ans. I can; here are some of them.

Int. 23. How many have you produced here?

(Same objections.)

Ans. Twenty-one.

Int. 24. Were these testimonial letters received in the regular course of your business?

(Same objections.)

Ans. They were.

Int. 25. Were these testimonials obtained on the solicitation of the company or its agents, or were they voluntarily sent to the company?

(Same objections.)

Ans. They were voluntarily sent to the company, largely.

Int. 26. Were any of them obtained by the payment or the giving of any consideration by the company to the contributors?

(Same objections.)

Ans. No, sir.

Int. 27. Have you caused to be printed a correct copy of the twenty-one original testimonials which you have just produced?

(Same objections.)

54 Ans. I have, and produce a copy of it now.

(The printed copy is offered in evidence and marked Complainant's Exhibit Printed Testimonials Received by Whitman Saddle Co., May 26, 1887.)

Counsel for defendant agrees that a printed copy of the testimonials above referred to may be used in this case with the same force and effect and in the place of the originals, provided that the originals are open to his inspection when called for.

Int. 28. The fourth testimonial on this printed copy purports to be a quotation from a letter from Major Wm. S. Brackett. Have you the original of that letter?

(Same objections.)

Ans. The company has not in this country. Major Brackett was inspector general of Illinois national guard. The letter was sent abroad to aid in convincing a foreign government of the value of the saddle made under this design. Before sending it away extracts were made on the books of the company of these portions relating to this saddle design 10844.

Int. 29. Do you know that these printed extracts from Brackett's letter are correct copies of the original?

Ans. I do; and they conform to his views expressed in person in our office.

Int. 30. Have you the originals of all the other testimonials which appear in the printed list above referred to?

Ans. I have.

Int. 31. What are these testimonials which I now show you?

Ans. They are photolithographic fac-similes of letters received by the Whitman Saddle Co. expressing the writers' views of this saddle.

Int. 32. Where are the originals of these photolithographic copies?

Ans. All of them excepting Secretary Bayard's were sent to Australia. I do not feel sure where his letter is.

(The photolithographic copies referred to in the last questions are offered in evidence and marked Complainant's Exhibit Photolithographic Copies of Testimonials, May 26, 1887.)

55 *Testimonials.*

NEW YORK, *Feb'y* 9, 1884.

Whitman Saddle Comp., 25 Murray street, New York.

GENTLEMEN—The reason I didn't write you before was because I wanted to give the saddle a good trial and test it thoroughly. This done, I am free to confess that the Whitman saddle is one of the best ever offered to the riding public; in fact, I know of no other which surpasses it in comfort and durability.

Yours, truly, LEOPOLD SCHENCK,
Editor German "Puck."

FORT MCINTOSH, TEXAS, *August 28th*, 1885.

Whitman Saddle Co., 25 Murray street, N. Y.

DEAR SIRS—I have just received the saddle-tree which I ordered of you. My delay in receiving it was caused by my absence in the field. Enclosed please find $0.50, balance due you, as per your letter of July 16. I have just ridden one of your saddles from Crisfield, Kansas, to Henrietta, Texas, 288 miles, and found that I could use it steadily on a back almost ruined by a McClellan.

Yours, etc., FARRAND SAYRE,
2d Lieut. 8th Cavalry.

General Louis Fitzgerald, commanding the second brigade of the national guard, says—

That during his active service in the army he had always used the McClellan saddle, but that the "Whitman," which he now uses, he considers superior in every respect.

56 Mema. from Maj. Wm. S. Brackett's letter, received Aug. 15, 1883, dated Peoria, Ill., Aug. 10, 1883:

"I am more than pleased with the saddle and bridle, and I think you will receive some orders from my friends here.

"I have had a good deal of experience with saddles, and think your model about perfect. I have used the McClellan and Jenifer trees when I commanded a company of cavalry, and find them clumsy when compared with the Whitman model.

"Your army saddle has beautiful and symmetrical lines like a clipper ship or yacht, and, better than that, is easy and well-fitting both to man and horse. It never galls the withers of the horse—a permanent objection to most other saddles I have seen.

"Truly yours, B."

PEKIN, CHINA, *Nov. 6th*, 1883.

To the Whitman Saddle Co., 102 Chambers street, New York city.

DEAR SIRS: I wish you would send me at your earliest conven-

ience, four (4) saddles (officer's), as shown on page 16 in your catalogue; best black leather, plain wooden stirrups, without hood, with leg guards complete. said saddles for gentlemen from 150 to 180 lbs. weight. Also two (2) lady's saddles, "best, all pigskin," as shown on page 8. Also two (2) of your halter bridles, black reins and tie strap, one with a No. 1 bit; the other, No. 4 loose ring plate, jointed mouth. One extra pair of No. 2 (extra large) rubber-footed stirrups.

When in the U. S. on vacation during summer '81, I made a careful examination of the "best" saddles common in the West and Southwest, visiting the largest establishments in the West, but found nothing to suit me. Ten years of constant riding, making long journeys over North China and parts of Mongolia, had made me acquainted with the defects of both English and American saddles. By accident, while in Cincinnati, I heard of the Whit-
57 man saddle. The more I studied the saddle the more I became satisfied it would answer my purpose; I procured one, such as I am sending for, through a firm doing business in Chillicothe, Ohio. For two years, now, my saddle has been in constant use and has given perfect satisfaction. For comfort both to the rider and horse I have never seen anything like it. One of the saddles I am now sending for is for a gentleman who used mine on a trip of 1,000 miles, and brought his horse in without having a mark upon his back or girth-galled. All the more remarkable, because all the horses in use in China have been more or less injured by the heavy, uncouth native saddle. It was after examining and trying mine that a number of saddles were sent for by a Mr. Brown, last winter.

The two lady's saddles are for lady physicians, one of whom has a greater reputation among the Chinese nobility than any other physician in China.

Enclosed you will find an order for payment from our mission treasurer on the secretaries of our board at 805 Broadway, N. Y. I have not put in the exact amount, as it is impossible from the mere catalogue. I am writing by this mail also to our secretaries. Please pack carefully and direct to my address, Rev. G. R. Davis, Pekin, China, care of McKenzie & Co., Shanghai. Send by Pacific Mail S. S. Co. via Panama and San Francisco to the above-named firm. Please make out duplicate bills, leaving one list with the secretaries and forwarding one with bill of lading to me, and you will greatly oblige,

Yours truly, G. R. DAVIS.

MORGANTON, N. C., *Feb. 26th*, 1884.

Whitman Saddle Co.,

GENTLEMEN: The saddle came safely some time ago, and I waited to try it thoroughly before writing. It is by all odds the most comfortable saddle I was ever in. Light, comfortable, stylish, expresses it
to a nicety. The stirrups are rather small, and not deep enough.
58 Please send me your catalogue; I want to order another pair.

I return the gun-sling, as it does not suit a shotgun. I loaned my catalogue to a friend and he has not returned it.

Very truly yours, GEO. A. MORAN, M. D.

MORRISTOWN, N. J., *Sept.* 1, 1880.

Col. Whitman.

DEAR SIR: I have been using one of your saddles now for some time, and never had one which I liked so well; in fact, I know of no other which compares with it in comfort and durability.

I bought this one at the Seventh Regiment fair, more with the idea of patronizing that institution than of benefiting myself so much, but am so well pleased with the purchase that I think other members of my family ought to be made equally contented by the possession of one, and I wish to know if you have anything for a lady that is correspondingly good, as I should like to get one.

Yours truly, TH. NAST.

SWEETSBURG, *May* 6, 1882.

SIRS: Your favor of the 21st ultimo duly received. The saddle is the best I ever sat in, and I have used a great many, both military and hunting, during the last 25 years. The superiority of your saddle is obvious at first sight. I did not write before because I wanted to have the saddle adopted by my officers, and send you at the same time an order for half a dozen more. I will submit the matter to my officers this month, and I have no doubt the saddle will please them as it did me.

As I wish to have the outfit complete, please send me one of your combination halter bridles, brass buckles and rings and 59 nickel-plate army bit, officer's pattern, with double reins; one pair of rubber-footed stirrups, officer's pattern, nickel plate; one felt saddle, cloth, Government size, 25 inches on back line; color, brown.

I don't know exactly the style of your army bit, but the bit I want should not have any cypher or device peculiar to the U. S. A. As you will readily understand, we can only wear the royal cipher as ornament, or none at all. A bit without ornament will answer.

Yours truly, T. AMYRAULD,
Lieut. Company A, F Battery.

Send goods per express.

FORT SULLY, DAC. T'Y, *Nov.* 4, 1883.

MY DEAR WHITMAN: Your saddle has been a constant pleasure to me since I received it early in 1880, but for eighteen months my position as staff officer in Washington afforded me no opportunity for testing it thoroughly.

Since joining my regiment in September, 1882, I have had ample experience of its value as a riding or hunting saddle, and my trip to the Pacific coast with Gen. Sherman gave me the fullest opportunity for testing its merits as a field saddle for long pack-mule campaigns. It has stood every test most admirably, and after four years of service is "as good as new." I consider it the most perfect saddle I have ever mounted, either for a short gallop for exercise or for hunting, or for the more trying service of long campaigns.

I congratulate you as a benefactor to both man and horse, and sincerely hope you may reap the fullest reward.

Yours, most sincerely, RICHARD S. DODGE,
Col. 11th Infantry.

60 My horse has an exceptionally sensitive skin, and until I used the Whitman saddle showed a tendency to sore back After using only the Whitman I had no trouble at all; even after my horse had stood entirely unused for three weeks, a ride on an August day failing to produce the slightest irritation. Nor have I used any other saddle so easy for the rider; as in it he naturally assumes a correct seat instead of maintaining it by effort, as in the other saddles that I have used. It gives me pleasure, as one of some experience in the saddle, to make this deserved acknowledgment of the superior and, as I am convinced, the unequaled merits of the Whitman saddle.

ALBERT DOD MINOR,
St. Johnsville, N. Y.

FIRST NATIONAL BANK,
ALTOONA, *June* 9, 1883.

The Whitman Saddle Co., 25 Murray street, New York:

DEAR SIRS—Please find herewith enclosed draft to your order on Continental National Bank of New York for $69.

For which send me by express your best all-pigskin side-saddle complete, with nickle-plated trimmings, and new rubber foot stirrup and side-saddle, gray cloth.

Price of side-saddle, $65; cloth side-saddle, $4.

I shall be obliged if you will forward it at once, as I wish to use it next week.

I have used right along the saddle I purchased from you two years ago, and have the pleasure to say that for comfort and ease to both horse and rider it has no equal.

Respectfully, JOHN LLOYD,
Union Avenue, Altoona, Pa.

Send by express.

61 FORT MONROE, VA., *April* 12, 1882.

Whitman Saddle Co., 102 Chambers street, N. Y. city:

GENTLEMEN—I enclose to you check for $32.25, amount due on account. Saddle suited to perfection. Please acknowledge receipt.

Yours, H. G. SQUIERS,
7th U. S. Cav.

AUGUSTA, MAINE, *May* 13, 1887.

Whitman Saddle Co., New York:

GENTLEMEN—Yours of 12th received. I am greatly obliged for your kindness, and much pleased with my saddle, which I think about the perfection of comfort for man and horse.

Very truly, POWER S. MOONEY.

ROANOKE, ROANOKE CO., VA., *April* 20, '82.

Whitman Saddle Co., 100 Chambers street, New York :

Enclosed find post order for $5\frac{60}{100}$ dollars for two pair No. 1 turn-foot nickel-plated stirrups. Send per express.

The two saddles I purchased of you I am daily using, and am well pleased with them, and you will have orders as fast as old saddles are worn out.

Have shown your saddles in four counties, and as far as I am concerned don't expect to ride any but the Whitman.

Yours truly, A. LEWIS.

In ordering, should I make an error in amount, write me and I will remit amount promptly.

62 POLICE PRECINCT—MOUNTED SQUAD OF THE CITY OF BROOKLYN, BROOKLYN, *January* 22, 1886.

Whitman Saddle Co.:

GENTLEMEN—Having passed all my life as cavalry and police officer in the saddle, and having ridden every saddle in use, I find the Whitman superior to any other for ease and comfort in riding.

Yours respectfully, JOHN H. JOHNSON,
Commanding Sergeant, Mounted Squad.

BUFFALO, N. Y., *January* 11, 1885.

Whitman Saddle Co., New York :

GENTS—I have purchased no less than three of the saddles known as the "Whitman," which is the best evidence I can give of my opinion of them. They were preferred by myself and my staff officers for their "ventilation" (in the seat) to both man and horse. Besides this improvement, they will stand hard usage and always be in shape when thrown upon the horse.

Yours respectfully, R. S. HOWARD,
Ex-Maj. General.

SPRING HILL, TENN., *April* 10, 1882.

Whitman Saddle Co.:

GENTLEMEN—Having used your saddle daily for six weeks, I can safely say that it has *no* equal for comfort to man and horse. It is the only saddle that I have had for years (and I have had several) that would not hurt a horse's back. Hope to see its use by every one.

Yours truly, M. C. CAMPBELL.

63 FORT SHAW, MONTANA, *Dec.* 4, 1885.

DEAR SIRS—Inclosed please find P. O. order for $6\frac{20}{100}$ dollars, amount of bills inclosed. Please accept my thanks for your kindness in this matter. I find that my saddle fills the bill ex-

actly, and for the first time in my life I have a saddle that I can ride all day without changing it on the horse.

Yours respectfully, FRANK P. AVERY,
1st Lieut. 5th Inf'y.

Whitman Saddle Co., 25 Murray street, New York city.

THE WACHOVIA NATIONAL BANK,
WINSTON, N. C., *June* 12, 1882.

Whitman Saddle Co., New York:

GENTS—I enclose check No. 8272, National Park bank, $2.90, balance on saddle, etc.

I am much pleased with the saddle, and find it the most comfortable and easy riding one I ever tried.

Respectfully, W. A. LEMLY.

FALL RIVER, MASS., *June* 7, 1886.

To the Whitman Saddle Co., No. 118 Chambers St., New York, N. Y.:

Gentlemen—I have received the saddle and equipments sent by you some days ago, and am pleased to inform you that they are highly satisfactory. I now enclose herewith cashier's check on the National Park bank, New York, N. Y., endorsed payable to your order for 55\frac{55}{100}$, amount of your bill as rendered.

64 Please receipt the enclosed bill and return to me, care Pocasset National bank, Fall River, Mass., and oblige

Very respectfully yours, H. C. COOK,
Captain U. S. A.

364 PROSPECT ST., CLEVELAND, O., *April* 27, 1882.

Whitman Saddle Co.:

GENTLEMEN—I wish to acknowledge receipt of one officer's saddle as per enclosed bill; please find herewith $24, as follows:

Capt. G. Lawson, No. 54, on J. J. Cisco & Co.	$10 50
P. O. money order	13 50
	$24 00

I like the saddle very much; it is the best I ever rode.

Very truly yours, GEO. ANDREWS,
2d Lieut., 25th Inf.

65 BELLE MEADE NEAR NASHVILLE, TENN., *February* 21, 1879.

Col. R. E. Whitman, 3d Cav., U. S. A.:

MY DEAR SIR—I have not forgotten my promise to give you my opinion of your saddle and bridle. The delay has been occasioned by my absence from home and the severely cold weather not favoring as full a test as I desired. I have now tried them to my satisfaction, and it affords me pleasure to be able to state that, in my

opinion, you have invented the best saddle I have ever seen. For lightness, fit to the horses's back, remaining in its proper position on horse's back, agreeable and comfortable seat for rider, and safety to rider, it surpasses any saddle I have ever used, and I have (in the cavalry service since 1856 to 1865) used every one I ever heard of, and this is the first sensible saddle I have seen. I therefore style it "The Common Sense Saddle."

The bridle is a model for the cavalry service and elegant and useful for the civilian.

Wishing you success commensurate with the merit of your invention, and the benefaction you have rendered to every horseman in the land, I subscribe myself

Faithfully yours, W. H. JACKSON.

PROBATE OFFICE, PISCATAQUIS COUNTY,
DOVER, ME., *May* 7, 1879.

Wm. P. Sargent & Co.:

GENTLEMEN—With this you will — postal order to pay for the saddle sent me for trial by you.

66 From my boyhood to the present time I have been in the habit of riding horseback, more or less. I have used various kinds of saddles, in all of which I have found imperfections, but this saddle is the first I have owned that is perfect. I cannot see where a change can be made for the better; the seat is exceedingly easy, and the manner it rests on the back of the horse must prevent chafing or pain to the animal. For this reason, if for no other, it should come into general use.

Truly yours. ELIAS J. HALE.

PIONEER OIL COMPANY, CLEVELAND, O., *June* 13, 1879.

R. E. Whitman, Esq., 102 Chambers street, New York:

DEAR SIR—Your favor of the 10th inst., with saddles, etc., duly received. After having ridden in your jockey saddle several miles to-day, I pronounce it unqualifiedly the easiest sitting saddle I ever tried, never having found anything to compare with it in all of my experience on the plains and elsewhere. Your invoice, as you will see by the enclosed memorandum made by you, that I return, calls for $2 more than the contract price. I paid the bill, believing it easier to right it with you than through the express company.

Very respectfully yours, F. ROCKEFELLER.

WINNEBAGO CITY, MINN., *June* 24, 1879.

Col. R. E. Whitman:

DEAR SIR—The saddle which Mr. Crane purchased for me arrived safely last week. I have ridden about thirty-five miles in it

67 since it came. Last Saturday (a very hot day), I rode not less that twenty-two miles, and I was delighted to find by such a test how nicely your saddle fits the horse and how little discomfort it gives. It suits me better than anything I ever rode in,

and during nine years of service as a home missionary on the frontier, I have used a good many saddles.

I am very much pleased also with the excellent quality and workmanship of everything about the saddle. The people here do not ride as much as in the Southwest, but for several years past stock-raising has become a growing business, and of course with that, riding becomes more common, and a good saddle more of a necessity. But as yet only a very few use anything but cheap concerns. I shall take pleasure in recommending your saddle to my friends. All who have seen it admire it, and I am greatly obliged to you for the very liberal reduction in price which you granted Mr. Crane on my account. I did not tell him to ask a discount because I was a clergyman, but none the less do I appreciate your kindness.

Yours truly, IRA S. DODD.

HARRISBURG, PA., *June* 20, '79.

R. E. Whitman:

DEAR SIR—Yours of the 19th received. I will not require another tree at present, and I think if I go out on campaign will make somebody else carry my traps. I have just been trying the saddle and like it exceedingly. I wish you would send one of your best saddles of the *same* pattern as mine, but smaller size, to Mr. John C. Kunkel, Harrisburg, Pa., "C. O. D.," without bridle. This will be a very good advertisement here, and I think you will get more orders.

Please attend to this at once and oblige

Yours, etc., E. V. SUMNER,
Maj. 5th Cav.

68 CINCINNATI SOUTHERN RAILWAY COMPANY,
CINCINNATI, O., *January* 16, 1879.

Col. R. E. Whitman, No. 102 Chambers street, N. Y.:

DEAR SIR—The saddle came to hand all right.

I am happy to congratulate you on producing a saddle that is the superior of anything of its kind in the market.

I shall unhesitatingly recommend it to all my friends.

Yours truly, GEO. K. KINNEY.

FORT MCPHERSON, NEB., *Sept.* 13, '79.

DEAR WHITMAN: I enclose P. O. money order for $22.50. The saddle arrived in good order, and I am delighted with it. It is certainly the best saddle I have ever seen. Please send me one of the special officer's bridles as soon as you have them ready. The stirrup strings appear to be long enough, but perhaps you had better send me an additional pair a trifle longer.

Very truly yours, P. D. VROOM,
Capt. 3d Cav.

69 Int. 33. Do you know whether Mr. R. E. Whitman received any testimonial letters from purchasers and users of these saddles prior to the organization of your company?

Ans. I do know that he did.

Int. 34. Were they turned over to your company; and, if so, can you produce any of the originals?

Ans. They were; quite a large number of them. Here are seven of them and a printed copy of the same.

(Said printed copy is offered in evidence and marked Complainant's Exhibit Printed Copy of Testimonials Received by R. E. Whitman, May 26, 1887.)

A similar stipulation is made regarding this exhibit as in regard to "Complainant's Exhibit Printed Testimonials Received by the Whitman Saddle Co."

Int. 35. How many of these testimonials, printed copies of which have been offered in testimony (I refer now both to the testimonials received by the Whitman Co. and R. E. Whitman), relate to the design of Whitman patent No. 10844?

Ans. All of those in exhibit marked "Printed Testimonials Received by Whitman Saddle Co.," all of these on the sheet marked "Received by R. E. Whitman," and all these marked "Photolithographic Copies" refer to saddles made under patent 10844, for design.

(By consent of complainant's counsel as to the time of making this objection respondents' counsel objects to all the foregoing testimony pertaining to opinions and testimonials as incompetent and immaterial.)

Int. 36. Are you a practical horseback rider?

Ans. I am.

Int. 37. Have you personally used saddles of the design of the Whitman patent No. 10844?

Ans. I have.

Int. 38. Have you used saddles of other designs; and, if so, what ones?

Ans. If this means Whitman design patents, I have; and if — refers to saddles apart from the designs of the Whitman patents, I have.

Int. 39. What other saddles which were in use prior to the date of the Whitman patent 10844 have you used or tested personally?

70 Ans. I have used the Muley, Jenifer, the English padded, the McClellan, and other saddles.

Int. 40. What have you found, from your personal experience, to be the facts regarding the value or advantages of the said Whitman saddle as compared with any of these others which you have referred to?

(Objected to as immaterial.)

Ans. I have found that the lines of the Whitman conform much nearer to those of the horse's back; that they give an impression of

much more grace and lightness, and that the conformation causes much more comfort to the rider and horse.

Int. 41. Have your company ever sold saddle-trees on which the design of the patent No. 10844 is made to the defendants in this suit, or have the defendants, to your knowledge, ever made saddles upon the trees of this design which were made by your company and sold to the defendants by other parties and which the defendants have covered and put upon the market?

Ans. We have sold saddle-trees to their New York representatives (the late firm of C. B. Smith & Co.) for the use of the defendants and which the defendants have covered and sold.

Int. 42. Did they cover and sell said saddles for C. B. Smith & Co., and were they put into the market by C. B. Smith & Co.?

Ans. They did and they were.

Int. 43. What is or was the relation, if you know, between the said firm of C. B. Smith & Co. and the defendants?

Ans. C. B. Smith & Co. were the selling agents and the Hartford house (the defendants) the manufacturing department of the joint enterprise. The trade generally did not recognize any difference between the two, C. B. Smith being partner in both houses, and perhaps other members of each were interested in both.

Int. 44. Do you know whether the firm of C. B. Smith & Co. or any of its members ever made any statement of praise or commendation relative to the Whitman saddle of the design of patent No. 10844? If so, what was it and how did it come about?

Ans. Mr. Worthington, of C. B. Smith & Co., did make such a statement of praise and commendation of said saddles in an interview occurring for the purpose of publishing said words of commendation in the Spirit of the Times, a newspaper published
71 in New York city. The statement was published in the Spirit of the Times under date of November 6th, 1880, and is as stated in that publication, a cutting from which is in my possession.

(Question and answer objected to as immaterial and incompetent.)

Int. 45. Can you procure a copy of the paper containing the said article?

Ans. I can.

(A copy of the said paper is produced by the witness and is offered in evidence and is marked "Complainant's Exhibit Spirit of the Times.")

(Objected to as immaterial and incompetent.)

Int. 46. Do you know whether or not at the time of the interview referred to with Mr. Worthington the firm of said C. B. Smith & Co. were acquainted with the saddles known in the market as the McClellan, the Muley, and the Jenifer?

(Objected to as immaterial.)

Ans. I know they were.

Int. 47. Had said firm, to your knowledge, dealt in the saddles named in the last question?

(Same objections.)

Ans. I know they had.

Int. 48. Have you examined Complainant's Exhibits A and C; and, if so, will you state whether or not such saddles are made upon trees which have been made by your company and licensed for use by other parties, or whether your company have licensed any one to make the said exhibits or either of them under patent 10844?

Ans. I have examined the exhibits. The trees contained in such exhibits were not made by the Whitman Saddle Co. and were not licensed for use, nor has the Whitman Saddle Co. licensed any one to make said exhibits or either of them.

Int. 49. When did you first learn that the defendants were putting saddles on the market like Complainant's Exhibits A and C without the license of your company?

Ans. In the fall of 1886.

Int. 50. State whether or not, from your experience as a seller of Whitman saddles, you would have any difficulty in selling saddles in shape exactly like Complainant's Exhibits A and C for the
72 Whitman saddles made by your company and containing the design of letters patent 10844.

(Objected to as immaterial.)

Ans. I would not.

Int. 51. Is there anything which a critical examination of those saddles would reveal to you which would prevent your selling said Exhibits A and C for Whitman saddles of your manufacture; if so, what?

(Same objection.)

Ans. The workmanship of the said exhibit saddles is not perfect and we should not care to sell them, for that reason alone, as Whitman's saddle.

Int. 52. If you should see for the first time Complainant's Exhibits A or C and at a distance so great as to preclude a knowledge of the quality of the workmanship in said exhibits how would the shape and the general appearance of said saddles affect you as compared with the shape and appearance of the saddles which your company have made and sold under design patent 10844.

(Objected to as incompetent.)

Ans. They would lead me to believe they were saddles of our own manufacture.

Cross-examination by Mr. SIMONDS:

X Int. 52. Will you produce and give me one of your catalogues?

Ans. Yes; here is one which I now hand you.

X Int. 53. Have you advertised as Whitman saddles those made

on such trees as shown in No. 6, page 33, of Defendants' Identification Exhibit No. 4?

Ans. We have.

X Int. 54. How many of the saddles were like this said No. 6, upon which were based the testimonials, more or less of which you have produced?

Ans. None of the testimonials produced relate to this so-called No. 6.

X Int. 55. Did Royal E. Whitman make his first saddle like that shown in design patent 10844 in the year 1878?

(Objected to as immaterial.)

73 Ans. I do not know.

X Int. 56. I thought you said in substance that you were familiar with Mr. Royal E. Whitman's doings in regard to this design for saddles.

Ans. I did say to this effect, as I stated in my answer.

X Int. 57. Then why can't you answer this question?

Ans. The question seems to ask what was done in years previous to 1878.

X Int. 58. Don't you know that in the year 1878 Royal E. Whitman was getting up the design of the patent in suit?

Ans. I do.

X Int. 59. Did you see the first saddle he made of that design?

Ans. I don't know.

X Int. 60. When did you first see one of that design?

Ans. In 1878.

X Int. 61. What part of the year?

Ans. Fall.

X Int. 62. How long had you then known Royal E. Whitman?

Ans. A very short time.

X Int. 63. Who made Whitman's first saddle or saddle-tree of this design for him?

Ans. As I understand legal testimony, I am not competent to say.

X Int. 64. Did Royal E. Whitman tell you it was C. H. Jacobus?

Ans. Whitman told me that he made the saddle-tree himself, using C. H. Jacobus and one Van Nest and others as manual workmen.

X Int. 65. Did Royal E. Whitman tell you or give you to understand that his first complete and satisfactory saddle, embodying the design of the patent in suit was completed in the late summer or in the fall of 1878?

Ans. I don't remember that he told me, but my impression is that it was about that date.

Counsel for complainant offers in evidence certified copies of decrees entered in the following suits in the circuit court of the U. S. for the district of New Jersey: Whitman Saddle Co. *vs.* Peters & Calhoun Co. *et al.*; also Whitman Saddle Co. *vs.* Joseph Bevan, and

the same are marked "Complainant's Exhibit Decrees in New Jersey Suits, May 26, 1887."

HENRY L. BUCK.

Complainants here close their *prima facie* case.

74 United States Circuit Court for the District of Connecticut.

WHITMAN SADDLE COMPANY
vs.
CHARLES B. SMITH *et al.* } In Equity.

NEW YORK, *August* 16, 1887.

Testimony taken on behalf of complainants in rebuttal for final hearing pursuant to the 67th rule of the U. S. Supreme Court, in equity, as amended, before William T. Farnham, Esq., notary public in and for the county and State of New York and special examiner by consent herein.

Present: R. H. Duncan, Esq., counsel for complainant, and Wm. E. Simonds, Esq., of counsel for defendant-.

JONATHAN D. FREEMAN, a witness called on behalf of complainants and duly sworn, testifies as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. Jonathan D. Freeman. I am 71 years of age and two months. I reside in Newark, New Jersey. I served my time at saddling.

Int. 2. Are you to-day a practical saddle-maker, and for how many years have you been such?

Ans. I am. I went as an apprentice to that business in 1831 and have been at that business ever since.

Int. 3. State what experience you have had in the manu-
75 facture of saddles and in what capacity you have been employed as a saddler, stating generally what styles of saddles you have made or superintended the making of, giving the names of the firms for whom you have worked and also what familiarity and experience you have had with saddle-trees of various kinds and their construction.

Ans. I have served my time at it and worked on it from that time up till 1847. I was in Philadelphia, and had charge of a saddle factory there. I left there, came back to Newark, went to work again in the factory of Faitoute Wright & Co., where I served my time. They persuaded me to take charge of their factory in 1850. I stayed with them till 1866 or 1867, one year before they dissolved their partnership; then I went with Demarest & Co., manufacturers of saddles. I was with them one year, and then went with the Trades Manufacturing Co., whose president was one of my old employers. I was with George Peters two months, but went back to the Trades Manufacturing Co. I remained with them till the time of the Chicago fire. Then I went in business for myself; made goods and sold them for myself. I am now employed by the Whit-

man Saddle Co. In the factory of Faitoute Wright & Co. we made four or five hundred different varieties of saddles—what were called "Oregon" for one, "Tampicos" for another, "Lucias," "Texas"—of all them fifty or sixty kinds; "Decaturs," "Tennessees"—all of various grades; side saddles for ladies, saddles of all kinds; English saddles of twelve, fifteen, or twenty different varieties; Hussar saddles, California saddles of the different forms and styles made at that time. This was when I had charge of their business. I made Kilgores and McClellans at this time, and made Shacklefords afterwards, when I was with the Trades Manufacturing Company. I made "Morgans" when I was with that company. When I worked for myself I made McClellans, a saddle called the Jenifer. I made a fine kind of lady saddle; I made Shacklefords; I made what is called the Louisville Shackleford for trotting purposes; I made trotting saddles, race saddles, English style; I made for Moseman the same thing precisely; I made military saddles for Mr. Moseman; I made officers' saddles for Baker & McKenney. When I had charge of Faitoute Wright & Co.'s we had attached to the building a three-story brick building fifty feet front by thirty in depth, for making saddle-trees. Daniel Demarest was the manufacturer and
76 owner. He could not sell any trees to any one but them without their consent. He manufactured for them altogether. That firm used to buy all the saddle-trees that were of use in their business that were made anywhere in the world. These were taken over to Demarest and there manufactured according to the orders of the firm. They gave orders to him to manufacture trees to the amount of three to five thousand at a time. They would duplicate that three or four times in the course of a year, and all the trees were ordered through me, except what might be ordered in my absence. If the trees were not suitable or not properly made they were rejected and returned.

Int. 4. State, if you can, approximately how many saddles were made under your supervision during any ten consecutive years.

Ans. We made from 1850, when I took charge of Faitoute Wright & Co.'s, up to 1860 and just before the war from twenty-two to thirty-two thousand saddles a year.

Int. 5. Up to 1878 how general and how particular a knowledge did you have of the different styles of saddles and saddle-trees that were manufactured in the United States?

Ans. I seen saddles manufactured of Joseph Straus & Co., of New York, nearly every kind they manufactured. I used a tree mostly in operation at that time, the Morgan, the Muley, and a very few of Texas styles, with very large heads, some of them five inches across, and all the time I was acquainted with Straus that was all the styles they used, and Miller, Morrison & Co., of New York. I have been in their warerooms and seen their goods, which were mostly of the same kind. Hoover, Calhoun & Co.—I have been in their warerooms and seen their styles of goods. The trees were the same styles, pretty much—stamped, figured, &c.

Int. 6. Did any of the concerns with whom you were engaged

gather together a collection of saddle-trees; if so, what firm and of what did the collection consist?

Ans. The firm of Faitoute Wright & Co. gathered up their trees and kept them from the time they commenced business till they were wiped out of existence. This collection was sold to a man named Lewis, and has since been destroyed by fire. This collection included not only the trees they used in their own manufacture, but all the new trees that they could collect together.

Int. 7. Were you familiar with all the trees of this collection and how carefully did you examine them?

77 Ans. So carefully as this, that no tree that was cantle-cracked or injured was allowed to go into the workman's hands. It went into the workman's hands for him to make as the tree was given to him.

Int. 8. Do you know what position this firm of Faitoute Wright & Co. held among manufacturers of saddles in the United States in respect to the number of saddles made?

Ans. They held the first position in the world as the manufacturers of saddles; they were the largest; their work was regarded as first class, so much so that men purchasing goods would duplicate their orders or send them on and have orders filled, a large portion of them without coming on North. They all received the exact goods as ordered.

Int. 9. Was it or was it not the custom or practice with saddle manufacturers or saddle-tree makers to change the form or shape of the saddle, or saddle-trees to suit the tastes of the purchasers of saddles prior to 1878?

Ans. As far as our own factory was concerned, we had a tree shop to manufacture saddle-trees. There was no other factory in the United States at that time except the one in Bridgeport that manufactured trees directly themselves. We would change sometimes, but seldom. When a change was made the original was almost obliterated.

Int. 10. What I mean by the question is substantially this: If a customer should say that he wanted a saddle like the Kilgore, for instance, except that he wanted the form of the pommel changed—that is, made higher or lower—or he wanted the cantle changed or the lines of the seat changed, was it the custom to make such changes in order to suit the tastes of such a customer?

Ans. No, sir.

Int. 11. Why wasn't it done?

Ans. Because the change would cost more than they got for the saddle. By doing that we would have to make what would cost so much more to add on that the man would not be willing under any circumstances to give it. The time that would be lost in getting the tree would be more than what we could get.

Int. 12. Prior to 1878 how familiar were you with the Kilgore saddle and saddle-tree, with the Muley saddle and saddle-tree, with the McClelland saddle and saddle-tree, with the Shackleford saddle and saddle-tree, and with the Jenifer saddle and saddle-tree?

78 Ans. So much so that I could tell them whenever I laid eyes on them. I have made saddles on all the trees just mentioned or had them made under my charge; have cut patterns for them, in some cases one hundred and in some cases five hundred.

Int. 13. Are you familiar with the Whitman saddle and saddle-tree as illustrated in the photographic drawing of the Whitman patent in suit, now shown you?

(Copy of drawing shown witness.)

Ans. I am perfectly familiar with it and know it in all its points.

Int. 14. When did you first see a Whitman saddle-tree like that shown in the patented drawing and under what circumstances was it shown to you?

Ans. I first saw that Whitman saddle-tree in the latter part of August or first part of September, 1878. I was going up Market street, Newark; was called into Mr. Condit's factory by Mr. Patten, his superintendent. He had told me a number of times that he would like to show me a new tree. I told him I would be very much pleased to see a new tree. He produced a tree like this shown in the photograph. He brought it from Mr. Jacobus' factory, where they were made. He held it up in his hand and asked me what I thought of it. I told him it was the most beautiful form of tree that I ever saw made, and I thought myself that I had never seen a tree equal to it for beauty of design, form, proportions, beauty of appearance, in all the saddle-trees that I ever saw. The beauty of it struck me as for the form for the rider and the horse, for the horse for its nice proportions to fit without bruising or hurting on the fore shoulders or on his neck, giving the man ease and comfort after the saddle was on the horse, the man having an easy seat and safe and roomy for his comfort und convenience of riding, and any one taking the lines as they are drawn from the back part of the cantle and so around to the under part of the cantle and so along through the curve on the lower part of the bar and forward through the crook to the top of the gullet, so over the top of that head to the centre of the tree to the beautiful oval top, to the back part of the centre opening to the tree and follow the curve around to the corner of the tree at its right angle, and down the inside opening of the tree is a graceful curve from there to the cantle, and follow to the round opening
79 up in the centre of the cantle and pass one inch and a quarter to the back part of that cantle, follow it around on its curve to the lower corner of the cantle, and strike upwards on that cantle and form a curve upwards slightly bent over and curved up to the corner of the cantle up to the peak, and follow the graceful throw-back there is in the cantle and the easy, graceful slope there is in that whole cantle and the form of the tree as complete, is in my opinion the most perfect designed tree made in the world.

(All after "1878" in this answer objected to as irrelevant, immaterial, and incompetent.)

Int. 15. When you first inspected the Whitman saddle-tree shown you by Mr. Patten, as you have stated, what impression did it make

on your mind in comparison with all the other saddle-trees which you had ever seen in respect to the differences or resemblances between the said Whitman tree and any of the other trees which you had seen?

(Objected to as immaterial and incompetent.)

Ans. I could see none whatever—no resemblance.

Int. 16. Did it occur to you that the Whitman saddle-tree was made up by taking parts of any of the trees which you had previously seen and combining them together, or did it occur to you that its design was produced in some other way?

(Objected to as leading, immaterial, and incompetent.)

Ans. As I said before, I did not conceive that anything had been taken, but that it must have been that the man who produced it must have been a man of brains and some mechanical ideas out of the ordinary way. At the same time I did not know the maker or inventor of the tree. I was afterwards told that Col. Whitman was the man who invented it.

Adjourned for lunch.

Resumed after lunch.

Int. 17. Were you acquainted with Col. Royal E. Whitman?

Ans. I was.

Int. 18. When did you first see him, under what circumstances, and what conversation, if any, did you have with him relating to the Whitman saddle in suit?

(Objected to as immaterial, irrelevant, and incompetent.)

Ans. I received a letter from Col. Royal E. Whitman about the 30th of September, 1878. It was in reference to my calling
80 on him in regard to asking me if I would make some of those saddles for him. I went to New York the next day, called at his office, corner of Chambers and Church Sts., upstairs. He asked me if I would make a saddle for him—would cover a tree like those in his office. I told him "no, I could not." He kept on talking to me and wanted me to make them. Finally I told him I would make one if he would furnish the stock, and finally I went to David Moffatt and bought one side of bridle, one side of strap, one side of stirrup leather. I then took the goods over to his store. There was a hogskin for seating bought afterwards. Two days afterwards I took the saddle in to him finished. He looked at it and said that he knew then why I could not make one like the sample, and then he called up some half dozen people to show them the difference in the workmanship of this saddle and the one that he had. He urged me afterwards to make all of his saddles. I did so, and have remained with him up to the present time.

Int. 19. How did the tree on which you made the first saddle for Col. Whitman compare in form and appearance with the tree that was first shown you by Mr. Patten, as you have stated?

(Objected to as immaterial.)

Ans. It was precisely the same.

Int. 20. Did you ever have a conversation with Mr. Whitman in which he set forth the reasons which led him to get up the patented design? And, if so, state when and where such conversation was and, in substance, what it was?

(Objected to as immaterial, irrelevant, and incompetent.)

Ans. Some two or three weeks after that, some time in the latter part of October, 1878, he told me that he first conceived the idea of getting up a saddle-tree for the accommodation of both man and beast, knowing, he said, that he would be retired from the army and riding on the saddle that he was on, which he rode in Texas and on the plains from five hundred to a thousand miles. It injured him and the horse—tired him by being confined in the short space of the tree. He conceived the idea, or thought of the idea, of forming a longer seat, knowing that the McClellan ruptured more riders than any other tree, and when he got a furlough from the army he started to come north—stopped at various places to enquire for a saddle-tree maker. He found none suitable for his purpose. He
81 came to the city of New York because he thought he could get up a tree, and kept thinking and worrying over a plan or plans, and went up to the city of Newark, into Mr. Jacobus', a saddle-tree maker's factory; went in there, took his coat off, went to instructing them in what he wanted. He tried various trees of his own thought. They did not suit exactly what his ideas were. After months' work he accomplished his end. He took the various forms of his own, fitted them on horses in Newark and the city of New York. He thought that by fitting different horses he would accomplish a perfect-fitting tree. He said his object in that was not to take other people's ideas or forms, but his own thoughts and that one object of his doing this was that he might do a great benefit to riders and equestrians, &c., and that thereby he might acquire an income to support himself and family after being retired from the army and placed in a position of independence for life. He said that he had been badly wounded in the hip during the war in the southwestern department, and as he was carried some two hundred miles in that condition without any surgical operation being performed, which left him in such a condition that he had to do something after the war; that his income was only that of a lieutenant, which would not be sufficient to support his family, and from this he went on to invent this tree. He said that he never saw anything like it, and only after long thought and search he accomplished it in his own mind. He said his tree would not rupture or injure any man, because it gave him room in the seat, ease, and at the same time he could turn either sidewise in the seat, and if he was thrown, by the formation of his tree he could not be ruptured or his testicles hurt by a spread or bulge on the side under figure "*c*" of the Patent Office drawing, and when the rider was thrown forward his legs would spread wider open and carry him over the head of the

said tree or saddle without injury, and that no man had given him any information with regard to the formation or design of said tree.

NEW YORK, *August* 17, 1887.

Met—present, counsel, as before—and the examination of Mr. FREEMAN was continued as follows:

Int. 21. In your interview with Col. Whitman, referred to
82 in your last answer, did Col. Whitman say anything to you about the position which his saddle could occupy upon the horse and the position of the rider when mounted on the saddle, relatively to the horse; and, if so, what did he say?

(Objected to as immaterial and incompetent.)

Ans. He said that the saddle and the rider sitting on the saddle, the tree being fitted close down on the horse, would give the rider an easy seat for himself; place him so that his knees would come close to the side of the horse, so that he could be sustained in his seat with perfect comfort and ease, so as not to fret the horse nor tire the man in his position. Resting his foot in the stirrups and his limbs being straight made him and the horse and the saddle the same as almost one—that is, one in appearance—and that the tree and the horse were so perfect in fit that to the man who made it, it was—his opinion a perfect tree, and that in my opinion, when I first saw the tree, in 1878, I was of the same opinion that he was at that time.

Int. 22. Was any style of covering saddles adopted by Col. Whitman or by those who made the saddles for him which had not been used in the covering of previous saddles; and, if so, what were the features of such styles?

(Objected to as irrelevant and immaterial.)

Ans. The saddle was covered, with open seat, and pieced behind at the corner of the cantle, and Col. Whitman wanted them made with a solid piece back—a continuation of the seat around to the back part of the cantle, so as to form a continuation of the seat and the tail piece behind. It had not been done before on any of his trees. It was his own suggestion and none other's.

Int. 23. Do you mean in your answer that the entire seat of the saddle, the cantle both on its upper and lower surface and the upper surface of the tail piece directly beneath the cantle, were all covered with one continuous piece of leather, so cut as to be fitted to those parts?

(Same objection.)

Ans. Yes, with the exception of the back part of the cantle. That is a separate piece. The rest is a perfect piece. They used to be cut at the corner of the cantle, as I said before. The back piece, to cover the upper surface of the tail piece, was cut off at the corner where the cantle met the seat.

83 Int. 24. Do you mean, then, that Whitman was the first man to cover the seat of a saddle, the upper surface of the

cantle and the upper surface of the tail piece under the cantle, with a single continuous piece of leather?

(Objected to as immaterial, irrelevant, and inadmissible for the first time in rebuttal evidence.)

Ans. All the saddles in Mr. Whitman's store were all cut at the corner of the cantle that I saw there, some four or five. He said he had asked the Condits to have the continuation of that tail-piece and the seat in one and they did not do it. He had urged them a number of times to have it done. I told him I would try and see if I could do it, and that I would charge him extra for doing it, and I was doing the same thing myself at the time—cutting the cantle the same as the others were when he asked me.

Int. 25. Question repeated as not being answered.

(Objections continued.)

Ans. So far as I know anything about it, that is so. I never saw it done before Whitman suggested it.

Int. 26. Did he adopt any new style of attaching the rigging or straps to the saddle; and, if so, what was it?

(Same objections.)

Ans. Cutting the recesses or slots in the bar of the tree for the admittance of the thickness of the leather within that slot, then by strict measure from one end of the strap to the ring which is attached, thirteen and a quarter on the long side, ten and three-quarters on the short side, which made a perfect draft for the tightening of the strap attached to the girth, and in tightening up the saddle on the girth made a square draft for tightening of the saddle on the horse by having the strap in that form perfect in its proportions.

Int. 27. Look at Respondents' Exhibits Slotted Kilgore Saddle, Slotted Muley Saddle, Slotted Granger Saddle, Jenifer-McClellan Saddle, and Park Saddle, and state whether or not those five saddles are each and every one of them made up in what you have designated as the Whitman style in these particulars—first, that the seat, the upper surface of the cantle, and the upper surface of the tail piece in each saddle is covered with one and the same continuous piece of leather, and, second, that in each saddle the straps or rigging is sunk into the tree so as to be substantially flush with the surface thereof.

(Same objections.)

84 Ans. They are all made alike as regards the seat—a continuation of one seat, the same as the Whitman. It is a copy patterned after the Whitman tree style. I find upon examination that the Exhibits Kilgore, Muley, and Granger Saddles have their tail pieces built or blocked up with leather to form recesses for the straps. The Park looks as if recesses were cut in the tree to let the strap lie in. In the Jenifer-McClellan saddle the parts next to the strap are blocked up or filled on either side to form recesses for the straps, and after the straps are put in pieces of leather are laid over

the straps and the portions of the tree next to them. Pieces of leather are put over them to make the surface level, the same as in the corresponding part of the Whitman tree.

Int. 28. Prior to 1878, in making Kilgore saddles, Muley saddles, and McClellan saddles, state whether it was customary or not to build up certain portions of the tree by the use of leather for the purpose of changing the shape of the saddles from what they would have been if the tree in its original shape had been close covered with leather.

Ans. I have never seen it done in my life, and I don't believe it ever was done. In all the factories I have been in I have never had it done or saw a man do it before 1878, nor since.

Int. 29. Look at Respondents' Exhibit Kilgore Tree and Respondents' Exhibit Kilgore Saddle and state whether or not if a tree like Exhibit Kilgore Tree is covered in Exhibit Kilgore Saddle the said tree has been built up; and, if so, where and to what extent.

Ans. This tree is filled up in front with leather to form the peculiar curve on the front or crook, front part of this tree, so as to form a straight and continuous line round to the stirrup bar. The top of the seat back of the crook has been filed from the crook back with either leather or felt and continued down to the stirrup bar on the top of the tree. The cantle is fastened onto the bar of the tree. It has been filled at the back part either with leather to form an easy slope at the back part, so as to represent a flat surface seat. The bar is padded underneath either with hair or felt.

Int. 30. I show you Respondents' Exhibits Muley Tree and Slotted Muley Saddle and ask you the same question regarding these two exhibits as the previous question regarding the two Kilgore exhibits.

Ans. This tree has not been filled up only at the back part
85 of the cantle, where the cantle comes down and forms a square upright angle, so as to form an easy slope from the cattle down on the seat. The crook in front and back of the front of the crook has been filled up to make the crook and the seat one continuous line. No other part of it except the rigging has been filled up.

Int. 31. I show you Respondents' Exhibit Jenifer-McClellan Tree and Jenifer-McClellan Saddle, and ask you the same as the two previous questions regarding these two exhibits.

Ans. This tree has not been built up anywheres about it only, as I said before, at the slot points where the rigging is attached.

Int. 32. State whether the tree covered in Respondents' Exhibit Jenifer-McClellan Saddle is the same tree as Respondents' Exhibit Jenifer-McClellan Tree.

Ans. Respondents' Exhibit Jenifer-McClellan Saddle, which I hold in my hand, the tree in it, covered up with leather, is not the same as the tree uncovered, Respondents' Exhibit Jenifer-McClellan Tree. The back part of the uncovered tree is not the same form at the back of the tail or end. The other one, the tree uncovered, is more of an imitation of the Whitman cantle in the curve in the back part.

Int. 33. State whether or not, prior to 1878, you had any knowledge of saddles which were in shape like Respondents' Exhibit Jenifer-McClellan Saddle or saddle-trees which were in shape like Respondents' Exhibit Jenifer-McClellan Tree.

Ans. No, sir; that cantle thrown over in that form never was done before.

Int. 34. Select from the various exhibits, saddles, and saddle-trees here present, eighteen in number, the one which, to your knowledge, prior to 1878, was made or in use and which comes nearest to Respondents' Exhibit Jenifer-McClellan Saddle or Jenifer-McClellan Tree.

Ans. (The witness selects a hide-covered tree marked for identification "W, H. E. T., ex.," and says that is the nearest of anything he finds in the exhibits. Witness then refers to Respondents' Exhibit Jenifer-McClellan Saddle and says if the tip of the cantle of this exhibit were cut off about one inch that then such saddle would very nearly represent saddles as they were known to him to be constructed before 1878.)

86 Witness continues: This tree (the Jenifer-McClellan tree) cut one inch off the tail would be a representation of said tree the same as used as far back as 1871. I have made all of fifty of them, and all cantles that are thrown over have been altered since Whitman formed his cantle or his tree. I knew it as simply the Jenifer.

Int. 35. In the fifty saddles which you made, as stated in your last answer, how did the front part of those fifty saddles and the length and line of the seat compare with those parts in Respondents' Exhibit Jenifer-McClellan Saddle?

Ans. The first part is the same. The length of the tree is increased. They used to be sixteen and seventeen inches. This tree is eighteen.

Int. 36. State whether the Jenifer saddles which you made more nearly compared in length of seat to "exhibit marked for identification W," &c., or to Respondents' Exhibit Jenifer-McClellan Saddle.

(Objected to as leading.)

Ans. I never made a Jenifer saddle that is on the genuine Jenifer tree. We had some of the original Jenifers. This cantle on the Jenifer tree (Exhibit W) would be a perfect copy in shape, provided across the broadest part of the tail where it turns was brought up to two inches in width; about an inch or a quarter or a half lower would be as near an exact copy of the original Jenifer tree as I saw it. We had three or four of the trees in the factory as far back as 1866 or 1867 or 1868.

(Witness, after being advised by counsel that he has not answered the question, takes up Respondents' Exhibit Jenifer-McClellan Tree and states as follows:)

The Jenifer saddles which I made were of the same length as Re-

spondents' Exhibit Jenifer-McClellan Tree and were like it except that the end of the cantle was cut off about two inches.

Int. 37. I show you Respondents' Exhibit Slotted Granger Saddle and I ask you whether or not, prior to 1878, you knew of Granger saddles made up in the style of said exhibit.

Ans. I did not; I never saw one made up.

Int. 38. How were the Granger saddles of which you have knowledge made up prior to that date?

Ans. The one that I saw was covered with hogskin and had
87 seamed jockies and a pair of flaps in it. That is the only one that I ever noticed that was made up.

Int. 39. What was the style of seat?

Ans. Close seat and a seat set onto it. A piece of leather placed on top of the bar, edges skived down thin so as to make no ridge, and a man tacks it on each side of the central slot of the tree, then sets the seat—that is to say, hair is spread over the top of the piece of leather which covers over the central slot and a seat cloth laid over the top of the hair and drawn tight and tacked down round the edge of the bars of the tree so as to form what is called a set seat. Afterwards the saddle is covered over with leather.

Int. 40. What is the difference between the operation of setting a seat and snowing a seat.

Ans. The difference is one has a seat cloth drawn over; then, after it is tacked, a hole is cut in one side and a steel stuffing iron then shoves the hair or wool back and sets it up so as to form a seat, the same as snowing, to look the same when they are finished.

Int. 41. If Respondents' Exhibit Slotted Granger Saddle had been formed with a set or a snowed seat as such seats are made by saddle-makers, how would it look compared with what it looks now?

Ans. On being all completely covered, the set seat and jockies, the saddle will be higher about an inch across the neck and follow that line along up till you strike two-thirds of the way down; then the seat being set makes it more round across from one side of the cantle to the other; will be round and about an inch and a half at the base of the cantle in the center of the seat, and at the finish the top will leave the line of the cantle the same as at present, so it will alter the whole appearance of the tree, as it is naked or open.

Int. 42. Suppose it were true that prior to 1878 there had existed one class of saddles having open longitudinal slots lengthwise of the seats, like that shown in Respondents' Exhibit Slotted Kilgore Saddle, and that there was another class of saddles having peaked cantles like those shown upon "Identification Exhibit W," and that these saddles were made upon trees of substantially the same shape as the saddles themselves, state whether or not, in your opinion, it would have been possible for a saddle-maker or a saddle-tree maker to have produced a saddle-tree the same as that shown in the Whitman patent in suit by the exercise of the mechan-
88 ical skill which belongs to saddle-makers or saddle-tree makers in the exercise of their trade.

(Objected to as irrelevant, immaterial, and incompetent.)

Ans. To answer that question properly I should say that I have never seen any tree invented—made—shown as said saddle-tree to compare in any respects whatever to what Mr. Whitman invented or designed in any way, shape, manner, or form. I have endeavored myself to try to make saddle-trees or have them made for me anything like unto it in any respect whatever, for I have endeavored myself to make trees sit close down on the horse's back, and none that I have ever conceived or imagined was of the same form or shape whatever. I have never heard a man say yet that he ever saw one the same as the Whitman tree in any form or shape, and, strictly speaking, the Whitman tree is most perfect in its form in every respect, from cantle bar and all, as a complete tree in itself adapted for the use of man or men for a riding saddle.

Adjourned for lunch.

Resumed after lunch.

Int. 43. As you are familiar with a great many forms of saddles and saddle-trees prior to 1878 and as you were impressed with the beauty and perfection of the Whitman saddle-tree the first time you saw it, as you have stated, why did not you produce a saddle-tree like the Whitman saddle-tree which you first saw?

(Objected to as immaterial and irrelevant.)

Ans. I had not ingenuity enough to do it.

Int. 44. Could you not have combined together certain parts of existing trees by the use of your mechanical skill, and in that way produced the Whitman tree?

(Same objection.)

Ans. No, sir.

Int. 45. Why not?

(Same objections.)

Ans. Because I hadn't skill or knowledge enough to do it.

Int. 46. Look at the saddle now shown you and compare it with the saddle shown in the photograph of the Whitman patent in suit, and state how the two compare in form and appearance.

89 Ans. That one there is a Whitman saddle-tree covered and is the same, except a slight nick in the front part. Some person has changed that tree slightly in front. The lines at the top are thrown a trifle back at the base, being cut there at the corner; it was cut down and alters the lines of the tree.

Int. 47. By "nick" do you mean the cut down back of the pommel and reaching down onto the lines of the seat?

Ans. Yes.

Int. 48. Whereabouts have the seat lines in the exhibit saddle been changed from the seat lines as shown in the drawing?

Ans. At letters *b* and *c* of the drawing.

Int. 49. How is it from the point *c* back towards the center of the seat?

Ans. Cut down, I should think, from the angle *c* about two inches back towards the cantle.

(The saddle shown witness and on which the last four questions have been based is Respondents' Exhibit Whitman Saddle.)

Cross-examination by Mr. SIMONDS:

X Int. 50. Prior to your engaging with Royal E. Whitman in the making of his saddles had his saddles been regularly made and sold in the trade?

Ans. I don't know about that.

X Int. 51. When did you begin with Royal E. Whitman in making his saddles?

Ans. In October, 1878.

X Int. 52. What was your position in the manufacture of saddles for Mr. Whitman?

Ans. He furnished me the trees. I manufactured the saddles at home, in my own house, No. 150 Madison street, Newark.

X Int. 53. That was the way you began with him in October, 1878, was it?

Ans. Yes, sir.

X Int. 54. How long after October, 1878, did you continue to make saddles in that way for Whitman?

Ans. I think it was, if I remember right, in the fall of 1879.

X Int. 55. You still continued with Whitman after the fall of 1879?

90 Ans. With the Whitman Saddle Co.—I have been with them ever since.

X Int. 56. Did you have any interest in Whitman's business or his patents?

Ans. No, sir.

X Int. 57. What has been your position with the Whitman Saddle Co. from the time you began with them till now?

Ans. Acting as foreman.

X Int. 58. Are you not practically superintendent?

Ans. Yes; the same thing.

X Int. 59. Have you any interest in the Whitman Saddle Co. or its stock?

Ans. No, sir.

X Int. 60. Is the pay you receive from the Whitman Saddle Co. increased or diminished by the amount of business done by that company?

Ans. No, sir.

X Int. 61. Prior to 1878 of how many different kinds or styles of saddles did you know having an open slot similar to that in Respondents' Exhibit Jenifer-McClellan Saddle?

Ans. I never knew only the McClellan, the Union McClellan, and the Jenifer.

X Int. 62. Is there any Union McClellan saddle or tree present among the exhibits?

Ans. I don't see any.

X Int. 63. Prior to 1878 of how many different kinds or styles of saddles did you know having a peaked cantle similar to that in the patent of Walter H. Jenifer of June 26, 1860?

(Patent shown to witness.)

Ans. What we call the Jenifer—that was the only one that comes anywhere near this drawing.

X Int. 64. Prior to 1878 of how many different styles of saddles did you know having peaked cantles?

Ans. The French Hussar for one, the English Dragoon saddle or cavalry saddle. That is all except the Union-McClellan—the Jenifer make—at the present time.

X Int. 65. Prior to 1878 were there different manufacturers in the United States making Muley saddles or trees, Kilgore saddles or trees, Jenifer saddles or trees, and McClellan saddles or trees?

91 Ans. Yes.

X Int. 66. When, prior to 1878, these different manufacturers made Muley saddles or trees, Kilgore saddles or trees, Jenifer saddles or trees, McClellan saddles or trees, or Granger saddles or trees, although the different manufacturers used the same names, did they all make the same shape of saddle or tree under the same name?

Ans. They all used the same trees as they came from the West, and every saddle manufacturer had his own form of making up his own work.

X Int. 67. Take the case of saddle-tree makers prior to 1878. Would not two manufacturers use the same name for a saddle-tree and yet vary somewhat the shape of the tree?

Ans. Not that I know of.

X Int. 68. Take the Kilgore saddle-tree, the central cut below the military Jenifer in Respondents' Exhibit Hatheral & Park's Cattalogue. Prior to 1878 did not other manufacturers of saddle-trees make what they called Kilgore trees which were not of just the shape of the Kilgore tree shown in the cut?

Ans. They made up the saddles in the factory the same as the tree was. They did not alter the tree. That cut there, that saddle was made up according to that tree.

X Int. 69. I repeat my last question, calling your attention to the fact that it refers to saddle-trees in distinction from saddles.

Ans. There was a Kilgore tree made different from that.

X Int. 70. For instance, if you should order a Kilgore tree from one manufacturer of trees and also a Kilgore tree from another manufacturer of trees they were liable, when they came, not — be of just the same shape, were they not?

Ans. Yes.

X Int. 71. Do you know whether or not John S Sullivan or the Sullivan Saddle Tree Co. made saddle-trees at Jefferson City, Missouri, from 1874 or 1875 to the present time?

Ans. I do not know when they commenced.

X Int. 72. Do you know whether or not Hatheral & Gosker or Samuel Hatheral or Hatheral & Company or Hatheral & Park

made saddle-trees at Cincinnati, Ohio, from 1855 or thereabouts to 1883?

Ans. I have heard so.

X Int. 73. Do you know whether or not Grimsley & Co. made saddle-trees at St. Louis, Mo., from 1853 and onward?

92 Ans. Yes, sir; up to a good many years afterwards; up to the war, I know.

X Int. 74. Do you know whether or not J. B. Sickles & Co. made saddle-trees at St. Louis, Mo., from 1861 to 1884?

Ans. I do not.

X Int. 75. Do you know whether — not Jacob Straus or the Jacob Straus Company made saddle-trees at St. Louis, Mo., from 1852 to the present time?

Ans. Not up to the present time, I don't.

X Int. 76. Do you know whether or not Jacob Straus or the Jacob Straus Company made saddle-trees at St. Louis, Mo., prior to 1852 onward for many years?

Ans. I know by reputation that they did.

X Int. 77. Do you know whether or not Edwin H. Wells was engaged in the manufacture of saddle-trees at Bridgeport, Conn., from 1835 to the present time?

A. I know Mr. Wells is the manufacturer of saddles but not of saddle-trees. I don't know anything about it.

X Int. 78. Do you know whether or not a man, firm, or corporation made saddle-trees at Huntington, Conn., from 1868 onward?

Ans. No, sir.

X Int. 79. Which of the saddles shown by cut in Respondents' Exhibit Whitman Catalogue No. 1 are marked by the Whitman Saddle Co. with the date of the patent in suit?

(Objected to as immaterial, irrelevant, and incompetent.)

Ans. I suppose they are all marked. I don't know.

X Int. 80. Same question as to Respondents' Exhibit Whitman Catalogue Nos. 2, 3, and 4?

(Same objections.)

Ans. I suppose they are all the same cut. I don't know the date of a single patent on one of them. I have never asked.

X Int. 81. Is not the marking of the date of the patent done in the factory of the Whitman Saddle Company, of which you are foreman?

(Same objections.)

Ans. It is done there.

X Int. 82. And do you say that you can't point out in these

93 Whitman catalogues a single cut of a saddle that when sold by the company is marked with the date of the patent in suit?

(Same objections.)

Ans. I suppose there is a card put on every one of them, but I can't tell the date. I never asked or cared anything about it. I know there is a card put on.

X Int. 83. Where is the factory of the Whitman Saddle Co.?

Ans. Corner of James and Essex streets, Newark, N. J.

X Int. 84. Is your home in Newark, N. J.?

Ans. Yes, sir.

X Int. 85. Has the Whitman Saddle Co. a store here in New York city?

Ans. Yes.

X Int. 86. Is a stock of various kinds of finished saddles kept at that store?

Ans. Yes.

X Int. 87. Will you, before this examination is finished, take these four Whitman catalogues, examine the Whitman Saddle Co.'s finished saddles at their store and factory, and then point out from these catalogues the cuts therein contained of those saddles which are marked by the Whitman Saddle Co. with the date of the patent in suit?

(Same objections as last above.)

Ans. I don't think I have any right to do it.

X Int. 88. Mr. Buck, president of the Whitman Saddle Co., has just said in your presence that you may have the right. Will you do it?

Ans. I will do it, if I have time.

(Respondents' counsel gives complainant's counsel notice that he considers an answer to the last two questions material and will insist upon an answer unless prevented by the court.)

Complainant's counsel in reply says:

(First, that the witness has answered the question and his answer is of record.

Second, counsel considers this line of examination of the witness relating to the marking of complainant's saddles entirely immaterial, irrelevant, and incompetent to any of the issues in this
94 suit, and has so indicated by his objections to the questions, and that this witness should not be asked to do the acts requested in the question.)

X Int. 89. In your opinion is the design of the patent in suit materially changed by the presence or absence of a central open slto in the seat?

Ans. Not materially, no.

X Int. 90. In your opinion is the design of the patent in suit materially changed by the presence or absence of the peak on the cantle?

Ans. The No. 1 tree is all that I know is in suit of Whitman's patent.

X Int. 91. Show me the No. 1 tree in the Whitman catalogues.

Ans. Fig. 1 of the patent in suit is the No. 1 tree.

X Int. 92. Now, is the design of that saddle in said figure 1 ma-

terially departed from if the peak on the cantle is taken off and left as a round cantle?

Ans. The part taken off would be the peak of the cantle, and that would destroy the No. 1 tree.

X Int. 93. And, in your opinion, would that be a material departure from the design?

Ans. It would change the style of the tree.

X Int. 94. So that you would not then consider it substantially the same design?

Ans. It would be partly the same design at the front and the proportions would remain.

X Int. 95. Suppose at the front you obliterate the angle at *c* and make that line substantially a curve or part of a circle from the rear of the pommel down to the middle of the seat, then, in your judgment, would you have wholly the same design or only partly the same design?

Ans. I don't know as I understand your question, exactly what you mean.

X Int. 96. I don't see how I can make my question any clearer, and therefore I repeat it.

(Question read to witness.)

Ans. I can't see that there is any great, any material change.

X Int. 97. In your judgment does the addition of flaps, skirts, or jockeys to the saddle shown in said figure 1 materially alter that design?

95 Ans. No.

X Int. 98. What is the color of the leather on the saddle shown in the Whitman saddle of the patent in suit?

Ans. I don't know what that saddle was covered with when it was taken.

X Int. 99. What was the color of the leather on the first saddle that Colonel Whitman showed you, as you have testified, in 1878?

Ans. I think it was stained with turmeric.

X Int. 100. Was it black or light colored?

Ans. It was pigskin, light before stained.

X Int. 101. Was it black?

Ans. No, sir.

X Int. 102. In making saddles under the patent in suit by Col. Whitman and the Whitman Saddle Co., has leather of different colors been used for covering trees?

Ans. Yes, sir.

X Int. 103. Before you ever saw Col. Whitman was leather of different colors used for covering saddle-trees?

Ans. Russet, hogskin, black.

X Int. 104. What was the date of the conversation mentioned in your answer to the 24th interrogatory?

Ans. If I remember right, it was in the month of December, 1878, or the fore part of 1879.

X Int. 105. Previous to that time had Col. Whitman's saddles been made so that the cover of the tops of the tail pieces under the

cantle were different pieces of leather from that which covered the seat?

Ans. They were cut, as I said before, at the lower corner of the cantle as it comes down; that was cut as a separate piece and laid on behind, but out of the same kind of stock under the cantle—the back part.

X Int. 106. In the saddle shown in the patent in suit the covers of the tops of the tail pieces under the cantle are pieces of leather separate from the piece that covers the seat, are they not?

Ans. The back part of that cantle is covered with the same leather as the seat—a piece laid under there. The seat on one in Whitman's store, back of the cantle is one piece separate from the
96 seat, for it would be impossible for a man to put the piece on the back part of the cantle down in one piece; therefore the other piece was cut separately. That laying on the tail was a separate piece.

X Int. 107. Question repeated.

Ans. I can't tell from looking at the drawing.

Adjourned for lunch.

Resumed after lunch.

X Int. 109. Do you know how long trees have been covered with hide after the manner the cover is put onto Respondents' Exhibit Hide-Covered Muley Tree?

Ans. I do not know how long.

X Int. 110. Do you know whether or not trees were so covered with hide prior to 1878?

Ans. I have known them to be so covered for at least thirty years.

X Int. 111. Previous to the conversation mentioned in your 24th answer Col. Whitman's saddles had been covered so that the covers of the tops of the tail pieces under the cantle were separate pieces from the leather which covered the seat, had they not?

Ans. Yes.

X Int. 112. In Respondents' Exhibit Park Saddle is the leather which covers the seat in one piece with the leather which covers the tops of the tail pieces under the cantle?

Ans. No.

X Int. 113. In Complainant's Exhibits A, C, and D, is the leather which covers the seat in one piece with the leather which covers the tops of the tail pieces under the cantle?

Ans. In A the seat is of one piece with the extension—is cut where the jockey comes to be seamed in. The jockey is cut in one continuous piece. In D, that is cut in one piece to the corner of the cantle; the crook is one piece front and the jockey is what is called a half jockey. In C the seat from the peak to the tip end of the cantle, the front, is one continuous piece except the corner of the cantle. The jockey is cut in one piece and seamed in from the front to the corner of the cantle.

X Int. 114. Question repeated.

97 Ans. No.

X Int. 115. How long have you known of such a saddle-tree as the Princess, illustrated in Respondents' Exhibit Hatheral & Park's Catalogue?

Ans. Only about four years, but not in that form.

X Int. 116. How long have you known such a tree as that last enquired of under the name Union-McClellan?

Ans. I knew a tree by the name of Union-McClellan in the year 1862 or '3; I think in 1862, and perhaps before; I am not certain.

X Int. 117. Was it substantially such a tree as is called "Princess" in Respondents' Exhibit Hatheral & Park's Catalogue?

Ans. The back part is a little more scooped.

X Int. 118. How long ago did you see any cut or illustration of a tree substantially the same as that tree which is called the Princess in Hatheral & Park's catalogue?

Ans. I might have seen a good many. I don't know exactly when. I have seen cuts.

X Int. 119. Was it prior to 1878?

Ans. I don't know.

X Int. 120. You can't say that you didn't see such a cut prior to 1878?

Ans. No, sir.

X Int. 121. Were the Princess and Union-McClellan trees covered with leather, with the central slot left open and with the leather in substantially direct contact with the tree, prior to 1878?

Ans. The Union-McClellan tree was covered with hogskin. The tail piece was separate and distinct; front piece on the flanges in front was separate and distinct; the front of the peak in front was a separate piece. The piece on the back part of the cantle was another separate piece. It was in four pieces; the bar separate, stitched in the middle.

X Int. 122. With what is Respondents' Exhibit Whitman Saddle covered?

Ans. Pigskin or hogskin.

X Int. 123. Prior to 1878 were the Princess and Union-McClellan trees you speak of, at least some of them, covered either with hogskin or with leather, with the central slot left open and with the covering in substantially direct contact with the tree?

98 Ans. The Princess—I never saw one made with an open seat. The ones that I saw was a full seat.

X Int. 124. But prior to 1878 you knew of the Union-McClellan tree you speak of—in shape much like the Princess, of Hatheral & Park's catalogue—covered with hogskin, the central slot left open, and the hogskin in substantially direct contact with the tree. Is that correct?

Ans. As I said before, the hogskin was stitched fast down on the tree and the under bar sewed fast to it.

X Int. 125. Last question repeated.

Ans. I said yes.

X Int. 126. How long have you known of such trees as Respondents' Exhibit Hide-Covered Muley Trees?

Ans. I have known such trees as that, I think, about fifteen or sixteen years. They always come hide-covered.

X Int. 127. How long have you known of cuts like Morgan-Muley in Respondents' Exhibit Hatheral & Park Catalogue?

Ans. I have known of Muley-Morgan about fifteen years.

X Int. 128. What kind of Granger trees did you know of prior to 1878?

Ans. I don't know much of them. I haven't thought much about them.

X Int. 129. Were they never used in any establishment you were connected with prior to 1878?

Ans. They were never used in ours, in the Trades Manufacturing Co., or Faitoute Wright & Co.'s.

X Int. 130. Were these Granger trees that you happened to see prior to 1878 the same as either Respondents' Exhibit Sullivan Granger Tree or Respondents' Exhibit Sullivan Black Granger Tree or Respondents' Exhibit Straus Granger Tree?

Ans. The only saddle I ever saw made was on a tree like that red one over there.

(Witness pointing to Respondents' Exhibit Sullivan Granger Tree.)

X Int. 131. In Respondents' Exhibit Hide-Covered Muley Tree, so far as regards the top of the tree, is there any filling between the hide and the tree?

Ans. I should think the filling was wood—a piece of wood put over here and the hide drawn over it.

99 X Int. 132. Question repeated.

Ans. All the filling is this piece of wood at the top of the tree.

X Int. 133. In Respondents' Exhibit Hide-Covered Muley Tree is there any filling between the hide and the tree?

Ans. As I said before, there is nothing put in; only just the natural tree under there.

X Int. 134. Then in Respondents' Exhibit Hide-Covered Muley Tree there is no filling between the hide and the tree?

Ans. As I said before, it is the naked wood.

X Int. 135. In Respondents' Exhibit Hide-Covered Muley Tree is there any filling between the hide and the tree?

Ans. There is an outside hide and an inside tree, and the hide has been colored, I should judge, with yellow ochre, painted on the under side of the hide; then the hide laid onto the wooden saddle-tree would be all the filling I know between the under bar and the top bar, the seat of the hide being sewed fast underneath.

X Int. 136. Then in Respondents' Exhibit Hide-Covered Muley Tree there is no filling between the hide cover and the wooden tree? Is that correct?

Ans. Yes.

X Int. 136. Prior to 1878 did you never see a Granger saddle-tree uncovered?

Ans. No, sir.

X Int. 137. Prior to 1878 did you never see but one Granger saddle?

Ans. I said I had seen none.

X Int. 138. Then is your answer to the 130th question a mistake?

Ans. That was a mistake. I never did see such a saddle. I thought you were speaking of the Princess.

X Int. 139. Then the fact is that you never saw a Granger tree or a Granger saddle prior to 1878?

Ans. I never did.

X Int. 140. Did you ever see a cut or illustration of a Granger saddle prior to 1878?

Ans. I can't answer that question; I don't know.

X Int. 141. Do you mean that you don't remember?

Ans. Yes, sir.

100 X Int. 142. How far back have you known trees like Respondents' Exhibit Kilgore Tree?

Ans. I never saw it till about three or four weeks ago.

X Int. 143. How far back have you seen cuts like the "Military Jenifer" cut in Respondents' Exhibit Hatheral & Park's Catalogue?

Ans. I don't know that I ever saw a cut like the one in this book.

X Int. 144. Prior to 1878 were saddles made some longer and some shorter?

Ans. There was boys' trees made prior to 1878; they were short. The regular length was from fifteen, sixteen, and seventeen inches. I am talking now about a Tennessee tree. It was very rare that a tree was made any longer unless the factory was close by.

X Int. 145. Prior to 1878 did you have Jenifer trees of different lengths?

Ans. I have made hundreds of them before 1878. I have never had an order to make them beyond the regular length.

X Int. 147. What was the regular length of a Jenifer saddle prior to 1878?

Ans. About sixteen inches from one corner of the notch to the top of the peak in front.

X Int. 148. Then prior to 1878 you never made a Jenifer saddle longer or shorter than sixteen inches?

Ans. No, sir.

X Int 149. The peak of the cantle is not included in that measurement, is it?

Ans. No.

X Int. 150. What is the longest saddle you made prior to 1878 of any kind?

Ans. I think in 1853 or '4, I won't say certain, a man in New Orleans wanted one tree for himself—a Spanish tree with a horn—on twenty-four inches line, and a side saddle for his wife twenty-four inches long.

X Int. 151. Did you make these specially for him?

Ans. They wrote to New Orleans to know if they meant it—if it was intended to be an order—and, if it was, it would be double

price, and they wrote back to make them and we made them. It was a rare occurrence, making extra-lengthed trees.

X Int. 152. What were the shortest saddles of any kind you made prior to 1878?

101 Ans. Nine inches.

X Int. 153. Of what lengths do you make the Whitman saddles under the patent in suit?

Ans. Seventeen inches.

X Int. 154. Is that the only length?

Ans. We make them as they order.

X Int. 155. What lengths do you make the Whitman saddle under the patent in suit now?

Ans. Seventeen inches.

X Int. 156. Do you make no other lengths of Whitman saddle under the patent in suit than seventeen inches?

Ans. We make them as ordered.

X Int. 157. Have you made them both longer and shorter than seventeen inches?

Ans. If that is the patent in suit we have never done it under that.

X Int. 158. Then of the style of saddle shown in figure 1 of the patent in suit the Whitman Saddle Co. and Col. Whitman, so far as you know, have made them all seventeen inches long; no longer or shorter?

Ans. Some might be an inch longer or shorter according as the man who made them measured them up.

X Int. 159. Can that design of the Whitman patent in suit be applied to saddles made longer or shorter than seventeen inches?

Ans. I never read the patent.

X Int. 160. I am not asking you for the construction of the patent. I ask you as a saddle-maker to look at figure 1 of the patent in suit and say whether that design is applicable to saddles longer or shorter than seventeen inches.

Ans. I don't know anything about the length of the saddle shown in the photograph. Col. Whitman took them.

X Int. 161. Do you make boys' saddles after the style of figure 1 of the patent in suit?

Ans. No, sir; no boys' saddles are made in the shop.

X Int. 162. Do you understand what the style or design of saddle is that is shown in figure 1 of the patent in suit?

Ans. The style is there before me—the cantle, the fore crook, bars, shape of the bar, shape of the fore crook.

102 X Int. 163. Then do you understand that design?

Ans. I understand the design is to be the form, shape, taken from the cantle and under the back part of the crook or chamber; from that around I suppose that I do know it. I know every point in it.

X Int. 164. Then, can that design be applied to saddles that are longer or shorter than seventeen inches?

Ans. The same lines of proportion could be drawn to eighteen inches or down to ten inches.

X Int. 165. Is is not a fact that when such saddles have been ordered you have made them of that design both longer and shorter than seventeen inches?

Ans. As I said before, the tree may be a trifle longer or shorter, according to the tree-maker who shaves it.

X Int. 166. I am not asking you about accidental variations. Is it not a fact that when so ordered you have made saddles of that design both longer and shorter than seventeen inches?

Ans. I have seen them eighteen.

X Int. 167. Have you seen them sixteen and a half?

Ans. I don't think I have.

X Int. 167*a*. Have you seen them sixteen inches?

Ans. Yes, sir.

X Int. 167*b*. Will you take a knife and on the peak of the cantle of Respondents' Exhibit Jenifer-McClellan Tree scratch a cross-mark indicating the "about an inch" to be cut off, mentioned in your answer to the 36th interrogatory?

(Witness makes the mark as requested on the Jenifer-McClellan exhibit tree.)

Ans. I have done so.

X Int. 168. Suppose that you had owned and ridden for three months, more or less, a saddle the same as Respondents' Exhibit Whitman Saddle, and your saddle had become lost or stolen, and you should go to a saddler to buy a new one the same as your old one, would you take or mistake either of the saddles Complainant's Exhibits A or C (never mind straps, flaps, or jockies) to be the same as your old one?

Ans. I shouldn't take this saddle (putting his hand on re-
103 spondents' Whitman saddle) to be the same as those over there, either of them (pointing to Complainant's Exhibits A and C).

X Int. 169. Do you suppose that anybody who had owned a saddle like that shown in the patent in suit, destitute of flaps and jockies, could ever mistake for the same thing Complainant's Exhibits A and C having flaps and jockies?

(Objected to as incompetent in that it calls upon the witness to express an opinion upon the judgement of other people, and also on the ground that the patent in suit does not cover jockies or flaps and is in no respect limited to any of the trappings of the saddle.)

Ans. They are not a Whitman saddle.

X Int. 170. Is that the best and most intelligent answer you can give to my last question?

Ans. The man would not take them for the Whitman saddle. I would not.

X Int. 171. What is the use or purpose or function of the peak on the cantle, as shown in the patent in suit?

Ans. As near as I understand the intention of it, it was to put a military valise under there at the back part and keep it from striking the man's back.

X Int. 172. So far as you know, that was the invention of Walter H. Jenifer, as set out in his patent of June 26, 1860, was it not?

Ans. That was a claim he made at that time.

X Int. 173. When you don't use this military valise what is the use or purpose or function of this peak on the cantle?

Ans. If a man wants to mount his horse he can put his hand on it and help raise himself.

X Int. 174. Do you think of any other use of it?

Ans. It gives him more ease. He can lean back on it, whereas if it was a round cantle he would strike his back against the cantle back.

X Int. 175. Has it any other use or function?

Ans. Yes; you can run straps down through it to hold a roll or bundle or blanket.

X Int. 176. Do you find any such mortise for such purpose in the patent in suit?

Ans. No, sir.

104 X Int. 177. Has it any other use or purpose?

Ans. That is all I know of at present.

X Int. 178. Are not all the purposes that you have named for this peak on the cantle served by the peak on the cantle of the Jenifer patent of 1860?

Ans. I have seen holes in cantles before 1860.

X Int. 179. Is that the best answer you can give to my last question?

Ans. I said "Yes" to that. There was holes in cantles before 1860.

X Int. 180. Compare, if you please, the peak on the cantle in the patent in suit with the peak on the cantle of the Jenifer patent of 1860, and say which of the two is rolled over, as you call it, the more completely.

Ans. The one on the patent in suit.

X Int. 181. Is the making of the peaked cantle a little longer or a little shorter, more or less, anything more than a matter of taste?

Ans. It is a matter of beauty.

X Int. 182. What, if anything, do you find in the specification or photograph of the patent in suit to tell you what length in inches or what height in inches or what breadth in inches any of the parts must be in order to embody the design attempted to be patented in that patent?

(Objected to on the ground that witness was not put upon the stand to interpret the patent, and no questions have been asked him on the direct in regard to the specification, and the witness says he has never read it.)

(Respondents' counsel gives witness the specification and drawing of the patent in suit for examination, and witness examines same.)

Ans. I see nothing in this. I don't know what this is. All I ever knew about them was making the trees seventeen inches, as he

made them. This gives him the privilege of making them longer or shorter, as they please.

X Int. 183. You mean by "this" as used in your last answer the printed matter which I handed you and you examined, do you not?

Ans. Yes, sir. There is nothing in that paper to show anything.

105 X Int. 184. The Jenifer patent of June 26, 1860, shows an unstuffed seat, a central open slot in the seat, and a peaked cantle, does it not?

Ans. It does.

X Int. 185. Do you recognize Respondents' Exhibit Whitman Saddle as originally (that is, before we altered it) a saddle of the Whitman Saddle Co.'s make and made under the patent in suit?

Ans. They never made that saddle.

X Int. 186. Do you mean that the Whitman Saddle Co. never made that saddle (Respondents' Exhibit Whitman Patent in suit)?

Ans. I mean the Whitman Company made the tree, but never put the covering on it.

X Int. 187. As that tree left the Whitman Saddle Co. the line just back of the pommel was much the same curve as in Complainant's Exhibit A, was it not?

Ans. No, sir.

X Int. 188. How did that line differ from the corresponding line of Complainant's Exhibit A, when that tree left the Whitman Saddle Co.?

Ans. This (Respondents' Exhibit Whitman Saddle) has been cut down about half an inch and cut back so as to destroy the whole appearance of the saddle.

X Int. 189. Then, as regards the part immediately back of the pommel, is there a radical and material difference between Respondents' Exhibit Whitman Saddle and Complainant's Exhibit A?

Ans. There is a material difference there.

Respondents' counsel states that he is through with the cross-examination of this witness until after this witness has given the information heretofore called for as to the styles of the saddles that are marked with the date of the patent in suit by the Whitman Saddle Co.

Redirect examination:

R. D. Int. 190. Look at the drawing of the patent in suit and then look at saddles Complainant's Exhibits A and C and, leaving out of consideration the jockies, flaps, and straps on said saddles, state how the saddles Exhibits A and C differ from or resemble the saddle of the patented drawing.

(Objected to as incompetent.)

106 Ans. Larger head on one and the design of the seat is not the same; cantle not the same. The lines, the seat at the front of the corner of the cantle is sharp, runs up. The slot in the middle is narrower. That is all I have to say.

R. D. Int. 191. What has got the larger head?

Ans. The saddle Complainant's Exhibit A has the larger head.

R. D. Int. 192. What is the difference in the seat?

Ans. In Exhibit A the lines of the seat along the slot back of the pommel are not the same as in the drawing of the patent.

R. D. Int. 193. You say the seat at the foot of the corner of the cantle is sharp, runs up. What do you mean by that?

Ans. The lines in Exhibit A from the corner of the cantle up towards the seat are sharper than they are shown in the drawing of the patent.

(At this point respondents' counsel states that he withdraws his objection to question 190.)

(Counsel for complainant objects to such withdrawal.)

R. D. Int. 194. You stated in answer to cross — 161 that no boys' saddles are made in the shop. I show you Whitman Saddle Co.'s catalogue, Exhibit No. 4, and ask you to give attention to this notice in such catalogue on page 17: "Boys' saddles made on trees Nos. 1, 2, 3, 4, 5, or 6," and ask you to state whether or not boys' saddles have not been made in the Whitman Co.'s factory on tree No. 1.

Ans. What I call a boy's saddle is a saddle of about ten or twelve inches. If there has been a saddle made on a tree of that length I did not know it.

JONATHAN D. FREEMAN.

HENRY M. VAN NESS, being called and duly sworn on behalf of complainants, testifies as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. Henry M. Van Ness; 40 years of age; I reside at 111 Sherman avenue, Newark, N. J.; my business is decorating.

Int. 2. What was your occupation in the year 1878?

Ans. Saddle-tree making.

Int. 3. How long had you been engaged in that business prior to 1878, and how long after that time and where?

107 Ans. Fourteen years prior to 1878; a month and two days after. I went out of the business Feb. 22, 1879. I was employed at C. H. Jacobus' factory, Lawrence street, Newark, while I was in that business.

Int. 4. Did you know Col. R. E. Whitman; if so, when did you first see him, where, and under what circumstances?

Ans. Yes, sir. I first saw him about the middle of May, 1878, at C. H. Jacobus' shop. He was talking about making a tree.

Int. 5. What did he come to Jacobus' shop for, if you know?

Ans. To make a tree.

Int. 6. How frequently did you see him there after he first came?

Ans. Every day.

Int. 7. During how long a time?

Ans. Three months.

Int. 8. What was he doing during this time when he was present in Jacobus' shop?

Ans. He was having a tree made under his instructions.

Int. 9. Who superintended the making of that tree—that is, who followed out the instructions given by Col. Whitman?

Ans. He gave the instructions to Jacobus and Van Ness. I mean Joe Van Ness. He was my uncle.

Int. 10. Who worked upon this tree—that is, who used the tools in constructing the tree?

Ans. Joe Van Ness, Hugh Jacobus, Jacob Pier, Henry Jenkins.

Int. 11. Did Col. Whitman himself use the tools at all in the construction of the tree?

Ans. Not often.

Int. 12. Did he at all? Did you ever see him use them?

Ans. Yes, sir.

Int. 13. Can you state the method that was carried out during these three months in which this tree was constructed? I mean, now, how it was done, what was done first and afterwards, what was the order of the steps taken, whether or not there were any failures and they had to start over and make new parts or a new tree, &c.

(Objected to as immaterial and irrelevant.)

Ans. The crook was first put up, then the bar, and then the cantle. There were failures when they had to start over or make a new tree.

108 Int. 14. Can you tell whether they were obliged frequently to take the tree to pieces and change the construction of the parts; and, if so, how many times was this done?

(Objected to as immaterial, irrelevant, and leading.)

Ans. Numerous times.

Int. 15. Did you personally do any work on this tree during the three months you have spoken of?

Ans. I sandpapered it—finished it off.

Int. 16. Did Col. Whitman or Jacobus or any of the workmen have before them any models or patterns which they used as guides in the construction of this tree?

Ans. No, sir.

Int. 17. How was the desired form, shape, and appearance obtained?

Ans. From the eye of Mr. Whitman, and trying it on a horse.

Int. 18. Did Mr. Whitman frequently inspect it during the different stages of construction?

Ans. Yes, sir; constantly.

Int. 19. You say that he tried it upon a horse. How many times was this done during the construction?

Ans. Three times to my knowledge.

Int. 20. Did you have anything to do with these trials upon the horse?

Ans. Yes, sir; I led the horse out for him.

Int. 21. Were changes made after the saddle-tree was tried upon the horse?

A. Yes, sir.

Int. 22. Did any one mount the saddle when it was upon the horse?

Ans. Mr. Whitman.

Int. 23. After the tree was finished were there any pieces or parts of the construction that they had used and been rejected left in the shop? If so, what were they?

Ans. Some of all parts of the tree.

Int. 24. Did you ever inspect those rejected parts after the tree was completed?

Ans. None but one part, the head; I took that home and finished it up.

109 Int. 25. What did this head show as to the amount of experiment or use that it had received?

(Objected to as immaterial.)

Ans. It had been used considerably in putting trees together. It had three holes in one side and two in the other.

Int. 26. Were there also rejected bars and cantles that were left in the shop?

Ans. Yes, sir.

Int. 27. What did the several holes that you have spoken about in the head indicate?

Ans. Use, where the screws had been put in to hold the head to the bar to level the tree up.

Int. 28. From the number and appearance of the holes could you form a good idea as to how many times the bars must have been secured to the head and removed?

(Objected to as immaterial, leading, and argumentative.)

Ans. A dozen and a half, I should think.

Int. 29. After the first tree was finished did Jacobus make other trees like it for Col. Whitman?

Ans. Yes, sir.

Int. 30. How long did Jacobus continue to make them, to your knowledge?

Ans. Till he went out of business. He continued to make them as long as I staid there.

Int. 31. Look at the photograph of the Whitman patent in suit now shown you and state how the first tree made by Col. Whitman in Jacobus' shop, when it was perfected, compared in form and appearance with the tree shown in the said photograph?

(Objected to as immaterial.)

Ans. The inner line (pointing to the line farthest from the observer at the junction of the cut-down of the pommel with the line of the seat) was more perfect.

Int. 32. You mean that it was more perfect than what line?

Ans. It was more perfect than what this outer line at the point *c* shows in the photograph.

Int. 33. What was the difference between the outer line of the

photograph at the point marked *c* and the corresponding part of the Whitman tree as you saw it?

110 Ans. It (the photograph) shows a sharp point; the other was more of a circle.

Int. 34. When this Whitman tree was finished how did it impress you as being like or unlike any saddle-trees that you had previously known?

(Objected to as incompetent.)

Ans. There was none other like it that I ever saw.

Int. 35. In your experience in the saddle-tree business has it been the practice of saddle-tree makers to change the shape and appearance of their saddle-trees to suit the taste of their customers?

Ans. I never heard of any changes made.

Int. 36. Have you had considerable experience with saddle-tree makers outside of what was done in Jacobus' shop?

(Objected to as leading.)

Ans. I did with a shop in Newark—Charley Lewis's. I was out and in there quite frequently.

Int. 37. Did you hear Col. Whitman or Mr. Jacobus make any remarks in regard to the Whitman saddle-tree? I mean in regard to its advantage or its being different from other saddle-trees; and, if so, what was said?

(Objected to as incompetent and immaterial.)

Ans. Mr. Whitman said he would make it perfect or he would not have it at all. Mr. Jacobus said it was altogether different from any tree he had ever seen or ever made.

Cross-examination by Mr. SIMONDS:

X Int. 38. Did C. H. Jacobus have more or less of the Granger trees on hand at different times when you were there?

Ans. He had the Granger tree there.

X Int. 39. Did he have the Granger trees there prior to 1878?

Ans. Yes, sir.

X Int. 40. Were those Granger trees, any of them, like Respondents' Exhibit Sullivan-Granger tree or like Respondents' Exhibit Straus-Granger tree?

(Same shown to witness.)

Ans. This (putting his hand on Respondents' Exhibit Straus-Granger tree) looks like the tree we had under the bench in

111 the wareroom. The other one (the Sullivan) I never saw, to my knowledge. To my knowledge we had not made any Granger trees for a long time before 1878.

X Int. 41. Prior to 1878 at Jacobus' were some of the Granger trees covered and made into saddles?

Ans. Not to my knowledge.

X Int. 42. Then Jacobus was simply a tree-maker?

Ans. Yes, sir.

X Int. 43. Are you a tree-maker or a saddler?

Ans. A tree-maker.

X Int. 44. Prior to 1878 had you seen Granger trees made up into saddles?

Ans. I might have seen lots of them and not paid any attention to them. I was in Condit's every day, but did not pay any attention to common trees, those used every day.

X Int. 45. Do you wish to be understood that you do not remember?

Ans. I have seen saddles made on the Granger tree.

X Int. 46. Prior to 1878?

Ans. Yes, sir.

X Int. 47. Were they made up with the central slot left open and uncovered?

Ans. I never saw any saddle made with an open slot except the McClellan and the Whitman tree.

X Int. 48. And did you see the McClellan saddle thus made up prior to 1878?

Ans. Yes, sir.

X Int. 49. Prior to 1878 how many different kinds or styles of saddles or trees did you ever see having a peaked cantle the same as or similar to that on the saddle I now show you?

(Witness shown Respondents' Exhibit Jenifer-McClellan saddle.)

Ans. None.

X Int. 50. What time in 1878 was it that Royal E. Whitman finished the first tree that he was satisfied with?

Ans. That I could not tell.

X Int. 51. How do you know what Jacobus made after you left him on February 22, 1879?

Ans. I was in the shop three or four times a week during afternoons.

112 X Int. 52. After Col. Whitman finished and perfected his tree how many of those same trees did Mr. Jacobus make for Col. Whitman, to your actual knowledge?

Ans. I could not state the number.

X Int. 53. Did he make six, to your positive knowledge?

Ans. Yes, sir.

X Int. 54. Did he make twelve, to your positive knowledge?

Ans. Yes, sir.

X Int. 55. How long after February 22, 1879, to your positive knowledge, did Jacobus make for Col. Whitman trees the same as those of the patent in suit?

Ans. I don't know when he went out of business. He made them until he went of business.

X Int. 56. Did he go out of business in the year 1879?

Ans. I can't say; I could tell by looking at papers that I have.

X Int. 57. Can't you tell whether it was one year or two or more after you left Jacobus that he went out of business?

Ans. I think he was in business one year; whether more or not I can't say.

H. M. VAN NESS.

LAURENCE CUNNINGHAM, being called and sworn on behalf of complainant, testified as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. Laurence Cunningham; 49 years of age; I reside in Newark, New Jersey; I am a saddler.

Int. 2. How long have you been engaged as a saddler and with whom have you been engaged?

Ans. I have been in the saddle business since 1851 with S. H. Condit; Condit & Horton for twenty-two years. After leaving Condit & Horton I went to work, during the war, with Mr. Storm for six months, on the corner of Frankfort and Gold streets, New York. After leaving Mr. Storm I went to work, in 1869, for Mr. Hoover, on Broadway. Then I went back to Condit's. As near as I can recollect, that was 1870. I remained with Condit for two years and came back to New York and worked for Joe Strauss, in Grand street. After leaving Mr. Strauss I went back for the third time to Con-
113 dit's, in Newark. This was either in 1873 or 1874. I remained with Condit up to about 1877; I think it was 1877. I left Condit's about May or June and went to work for Mr. Freeman, on Railroad avenue, Newark. I remained there till about 16th of July, 1877, as near as I can recollect, and then went to Mess. Peters, Calhoun & Co. I am there now. About four years ago I went with Mr. Buck and made one hundred officers' saddles.

Int. 3. What year did you leave Condit's the first time you worked there?

Ans. I left Condit in 1868. I came back in 1870.

Int. 4. Did you know Wm. T. Goodsell while you were at work at Mr. Condit's?

Ans. I did.

Int. 5. Was he at work there when you first went?

Ans. He was.

Int. 6. What position did he occupy?

Ans. He was working as a journeymen when I first went there, right next to me. After his father died he got charge of the factory as foreman.

Int. 7. While you were at Condit's were any saddles manufactured there which were known as and called Granger saddles?

Ans. There were none till about 1872. As near as I can recollect, it was 1872 that the Granger saddle was introduced.

Int. 8. Do you know the circumstances which led to their introduction?

Ans. All I know is that the saddle was sent on from St. Louis and introduced in the factory.

Int. 9. Do you know where the trees came from on which the saddle was made?

Ans. All I know is, as near as I could learn at the time, *was* that the tree came from St. Louis.

Int. 10. Can you tell how many of these Granger saddles were made at Condit's prior to 1877?

Ans. I don't think there were fifty saddles made, to the best of

my knowledge. I could see all the saddles that was made there if there was any made.

Int. 11. How were these Granger saddles made up at Condit's? I mean the style of their make-up.

114 Ans. Made up with a closed seat.

Int. 12. Explain what you mean by made up with a closed seat.

Ans. A strainer runs over the central slot. After the strainer is dried the workman will go to work and snow that seat, throw the hair over it, and make it to shape; then you draw a piece of muslin or flannel over it to cover the hair; if the shape don't suit, you have got to alter it; then it is covered with leather, either hog-skin or bridle.

Int. 13. In snowing a seat how thick is the hair placed upon the seat? I mean in the making of these Granger saddles how thick was the hair placed upon the seat.

Ans. Well, you can go to work and raise the seat on the neck an inch and a half. It was laid over loosely, just thrown over, in making those Granger saddles. The strainer would raise it more than the hair would. What a saddler goes by is putting in the strainer.

Int. 14. Look at the photograph I now show you and tell me what saddle that is, if you know.

Ans. That is a Granger saddle all the way through.

Int. 15. How does it compare in shape and appearance with those that were made at Condit's while you were there?

Ans. It is as near to it as I can say. I don't see any alteration whatever.

Int. 16. Have you known of these Granger saddles being made at other places than Condit's?

Ans. Yes; at Peters, Calhoun & Co.

Int. 17. How did the ones which Peters, Calhoun & Co. made compare with the one in the photograph before shown you?

Ans. It corresponds exactly.

(Photograph shown witness is offered in evidence and marked Complainant's Exhibit Photograph of Granger Saddle, Aug. 17, 1887.)

Int. 18. Can you tell when Mr. Goodsell left the employment of Condit?

Ans. To the best of my recollection he left there in 1872 or '3 and went to California.

Int. 19. Mr. Goodsell says in his testimony given in this suit that it was his impression that Granger saddles were made up at

115 Condit's shop with the central slot left open. Can you tell whether or not Mr. Goodsell is mistaken in making that statement?

Ans. I never remember a Granger saddle made with an open seat. What I mean by an open seat is the central slot left open.

Int. 20. Were you at work at Condit's continuously from the time

that the first Granger trees were received there until the time that Mr. Goodsell left the employment of Condit?

Ans. As near as I can recollect, I was in the factory when the first Granger tree came there. I continued to work there up to 1877, as near as I can recollect.

Int. 21. Now, if there had been Granger trees made with open seats during the time stated in your last answer, were you in a condition and circumstances to have known it?

Ans. If there was a Granger saddle made in that factory, I was in a position to know whether it had an open seat or not.

Int. 22. When did you first know of the Whitman saddle like the saddle shown in the photograph of the Whitman patent in suit, the photograph being now shown you?

Ans. In 1877 or 1878.

Int. 23. Where did you first see it?

Ans. I first heard about the saddle when I was in Mr. Freeman's employ, but I first saw the tree when I was with Peters, Calhoun & Co.

Int. 24. How did the first Whitman saddle which you saw strike you as being like or resembling any other saddle which you had previously seen?

Ans. It was altogether different from anything I had ever seen. The lines on the seat—the front was different It showed a different appearance all the way through, right from the cantle to the head.

Int. 25. What impression did it make upon your mind in respect to beauty and desirability?

Ans. The first time I saw the saddle-tree I thought it was the most comfortable that a man could make up.

Int. 26. Did it make any impression on your mind in respect to the grace, symmetry, and proportion of the parts; and, if so, what?

Ans. It did, because you can put on the bearing with the straps and use no skirts whatever. The beauty of that tree is you can put on these skirts or leave them off.

116 Int. 27. At the time that you first saw the Whitman saddle were you familiar with what is known in the market as the Kilgour saddle, the Muley saddle, the McClellan saddle, the Granger saddle, and the Jenifer saddle?

(In view of the last question, questions 24 to 27, inclusive, are objected to as incompetent.)

Ans. I was acquainted with the Muley, the Kilgour, and the McClellan. The Jenifer saddle I was not acquainted with. The Granger I did not see till 1872.

Int. 28. Were you acquainted at the time you first saw the Whitman saddle with any saddle having a peaked cantle like or similar to that shown upon exhibit marked for identification W?

(Same objections.)

Ans. I was; what they called the Hussar cantle. It ran into a sharp point. The third saddle from the left shown on the upper

line in Respondents' Exhibit A, Smith, Bourn & Co.'s trees, is the Hussar saddle.

Int. 29. Some of the respondents' witnesses have testified in this case that prior to 1876 it was the custom of saddle-makers and saddle-tree makers to alter the shape of saddles and saddle-trees to suit the tastes of different customers. What is your experience on that point?

Ans. I have never seen it done.

Int. 30. Have you ever known of its being done in any of the shops where you have worked?

Ans. I never have known it to be done.

Cross-examination by Mr. SIMONDS:

X Int. 31. Are you a saddle-maker or a saddle-tree maker?

Ans. I am a saddle-maker.

X Int. 32. Is the shape of the saddle pretty much determined by the shape of the saddle-tree?

Ans. Any saddle-maker can alter the seat of the saddle with a jockey—raise it or lower it.

X Int. 33. What has the jockey to do with altering the seat of the saddle?

Ans. It forms the shape of the seat.

117 X Int. 34. Is it by means of a jockey that the seat of a saddle is raised or lowered by the saddle-maker?

Ans. Yes, sir.

X Int. 35. What is the jockey of a saddle?

Ans. The cut on the backside of Respondents' Exhibit Whitman Catalogue No. 3 shows a saddle which has a jockey.

X Int. 36. Is the jockey in that cut that piece near the front end of which there is a small circle?

Ans. The nail is right there at the head of the jockey.

X Int. 37. Does that circle denote a nail or nail head?

Ans. Yes.

X Int. 38. Now, is that cut which is on the back of Respondents' Exhibit Whitman Catalogue No. 3, is the jockey that piece of leather which has the nail near the front end of it?

Ans. That is the jockey.

X Int. 39. Now, will you explain how the seat of the saddle is raised or lowered by means of the jockey?

Ans. You can't do it by the jockey.

X Int. 40. I read to you your answer to the 32nd question. (Same read to witness.) Is that answer a mistake?

Ans. It is correct.

X Int. 41. Then is it true that you can raise or lower the seat of a saddle by means of the jockey?

Ans. Yes, sir.

X Int. 42. Will you explain how you can raise or lower the seat of a saddle by means of a jockey?

Ans. I'll raise that tree there now (pointing to Identification Exhibit W) an inch and a half by means of a strainer—no; say an inch.

X Int. 43. Is that raising the seat by means of a jockey?

Ans. No, sir.

X Int. 44. Then can you raise or lower the seat by means of a jockey?

Ans. That depends whether you want an open seat or a full seat.

X Int. 45. Is not the shape of the saddle pretty much determined by the shape of the saddle-tree?

Ans. As a general thing, it is not. You can go to work and alter the shape on the top. On the bar of the tree you can't alter it.

118 X Int. 46. Throwing flaps and jockeys out of consideration—that is, having in mind a saddle which has no jockeys and no flaps—is not the shape of the saddle pretty much determined by the shape of the tree?

Ans. Yes; if you don't put any covering on it.

X Int. 47. In the photograph of the patent in suit the saddle is without flaps and jockeys, is it not?

Ans. It is.

X Int. 48. But in figure 1 the tree is covered into a complete saddle, is it not?

Ans. Yes, sir.

X Int. 49. For whom do you now work at saddlery?

Ans. Peters, Calhoun & Co.

X Int. 50. Have you ever worked for the Whitman Saddle Co.?

Ans. I have.

X Int. 51. When and how long?

Ans. As near as I can recollect, three or four years ago I made a hundred saddles for Mr. Buck. I was there about five weeks.

X Int. 52. Does the Peters, Calhoun Co. do any work for the Whitman Saddle Co.?

Ans. Not to my knowledge.

X Int. 53. What kind of saddle work do you do?

Ans. I am working now on side saddles.

X Int. 54. What part of the work do you do?

Ans. I take the saddle-tree and finish it out so that it can be put on the horse.

X Int. 55. Do you work time-work or piece-work?

Ans. I work piece-work.

X Int. 56. Have you worked for Col. Whitman in the past?

Ans. I have not.

X Int. 57. Did you give these various dates of going to work for different parties and quitting that work from any written memoranda or from memory?

Ans. From memory; I have no written memoranda.

X Int. 58. You went to work for the Condits, as you remember it, in 1851?

Ans. Yes.

119 X Int. 59. Did you work for the Condits continuously from 1851 up to the time you went to work for Mr. Hoover, during the civil war?

Ans. I went to work continuously for Condit until I quit and went to work for Hoover, in 1862, in Reade street, New York.

X Int. 60. And did you go back from Hoover's to the Condits?

Ans. I did.

X Int. 61. When did you thus go back from Hoover's to Condit's?

Ans. In 1862, and remained till 1865.

X Int. 62. And did you quit the Condits in 1865?

Ans. I went into the army in 1865, and that is the reason why I know it.

X Int. 63. When did you again go back to saddle-making after being *the in* army?

Ans. I came back from the army in July, 1865. I went back to saddling at Condit's in the following September.

X Int. 64. How long did you remain with Condit after going to work for him in September, 1865?

Ans. I worked for him up to 1868.

X Int. 65. What time in 1868 did you leave Condit's?

Ans. The winter of 1868 and 1869. I went to work for Hoover in 1869, after January.

X Int. 66. Did you go from Condit's to Hoover's?

Ans. I did not.

X Int. 67. To what work did you go from Condit's at this time?

Ans. I went as weigh-master to the New Jersey zinc works, in Newark, because business was dull.

X Int. 69. What was the date of your going to work at the New Jersey zinc works?

Ans. 1869.

X Int. 70. In what month?

Ans. I quit there in September, 1869, and went to work for Hoover, in New York.

X Int. 71. What was the date of your going to work for Hoover at this time?

Ans. The month of September, 1869.

X Int. 72. Until what date did you remain working for Hoover at this time?

120 Ans. I remained till February. I think it was February that I quit Hoover. I then went to work for Condit. William T. Goodsell employed me.

X Int. 72. How long did you remain working for the Condits on this occasion?

Ans. Till I got appointed on the police force of Newark, in 1870.

X Int. 73. What time in 1870 were you employed on the police?

Ans. I went on the police in March. I worked about a week or two in Condit's.

X Int. 74. How long did you remain on the police?

Ans. One year.

X Int. 75. Until March, 1871?

Ans. Till about that time, when I was relieved.

X Int. 76. On leaving the police in March, 1871, or thereabouts, to what employment did you go?

Ans. I went to my trade, saddlering.

X Int. 77. For whom did you go to work as a saddler at this time?

Ans. Condit.

X Int. 78. Was that in March, 1871, or thereabouts?

Ans. Thereabouts.

X Int. 79. How long did you remain with the Condits on this occasion?

Ans. I think I remained with Condit for two years then, as near as I can recollect.

X Int. 80. When was the date of quitting Condit's on this occasion?

Ans. I couldn't say. I quit them and went to work for Joe Strauss, in New York.

X Int. 81. Do you feel sure how long you worked for Condits on this occasion after going to work for them in 1871?

Ans. I couldn't be certain whether it was two years or three.

X Int. 82. Are you certain it was not less than two years?

Ans. It was not less than two years.

X Int. 83. Did you go directly from the employment of the Condits, when you left them on this occasion, into the employment of Joseph Strauss?

Ans. I did.

121 X Int. 84. What was the full name of the Strauss concern and where was that business done?

Ans. Joseph Strauss; on Broadway, above Duane street. I could not tell the number.

X Int. 85. Was it Joseph Strauss and some one else or Joseph Strauss alone?

Ans. Joseph Strauss.

X Int. 86. Was William T. Goodsell working for the Condits on this occasion when you left the employ of the Condits and went to that of Joseph Strauss?

Ans. He was not.

X Int. 87. How long before you quit the Condits at this time was it that Wm. T. Goodsell had quit the employ of the Condits?

Ans. Wm. T. Goodsell quit before I did. He went to California.

X Int. 88. How long was that before you quit the Condits on this occasion?

Ans. I quit the following season.

X Int. 89. What time in the year did Goodsell quit the Condits on this occasion?

Ans. I think in the spring.

X Int. 90. What time in the year did you quit the Condits on this occasion when you went to Straus?

Ans. I went in the fall.

X Int. 91. The fall following the spring that Goodsell quit?

Ans. Yes.

X Int. 92. How long did you remain with Joseph Straus after thus going to work for him?

Ans. About four months.

X Int. 93. To whose employment did you then go from Strauss?

Ans. I went back to Condit's.

X Int. 94. What year and what month of the year was that?

Ans. I wouldn't be positive of the year or the month.

X Int. 95. In what season of the year was that?

Ans. When I left Straus it was in January.

X Int. 96. How long did you remain with Condit on this occasion?

Ans. I think I went back to Straus, in Houston street, N. Y., the following year.

122 X Int. 97. Did you stay with the Condits more than a year this time?

Ans. About a year.

X Int. 98. And then went back to Straus?

Ans. I did.

X Int. 99. How long did you stay with Straus on this last occasion?

Ans. During the season for the fall trade, from July up to the latter part of September.

X Int. 100. On leaving Straus at this September where did you go to work?

Ans. I went back to Newark.

X Int. 101. What did you do at Newark?

Ans. Worked at saddlery.

X Int. 102. For whom?

Ans. For Condit.

X Int. 103. Did you go to work for Condit about this last of September you last spoke of?

Ans. I did.

X Int. 104. How long did you stay with Condit after this September?

Ans. Till May, 1877, when I went with Mr. Freeman.

X Int. 105. And how long did you stay with Mr. Freeman this time?

Ans. Till about July 16, 1877.

X Int. 106. Where did you then go to work?

Ans. Peters, Calhoun & Co.

X Int. 107. How long did you stay with them on this occasion?

Ans. Ever since, except when I worked five weeks for Mr. Buck. I am there yet with Peters, Calhoun & Co.

X Int. 108. Has your employment with Peters, Calhoun & Co. been steady and continuous since July, 1887, except these five weeks?

Ans. It has.

X Int. 109. Are you on the police in Newark, N. J., now?

Ans. No; I am only a special.

Adjourned till Thursday, the 18th inst., at 10 a. m.

123 NEW YORK, *August* 18, 1887.

Met pursuant to adjournment.

Present: Counsel as before.

Cross-examination of Mr. CUNNINGHAM continued:

X Int. 110. While you worked at Condit's from 1870 to 1873 or thereabouts how many workmen were employed there?

Ans. As near as I could judge that, about 1873 he had from about eighty to a hundred men.

X Int. 111. How many of them were employed making saddles?

Ans. About nine in 1873.

X Int. 112. Were you one of the nine?

Ans. I was.

X Int. 113. Did these nine men all work in the same room?

Ans. Yes.

X Int. 114. How many saddles did they make there in the course of a year?

Ans. From two to three thousand, about.

X Int. 115. On an average, how many saddles can a saddler make in a day?

Ans. That depends on the quality of the saddle he gets to make.

X Int. 116. Taking the kinds and qualities of saddles that were made at Condit's from 1870 to 1873, how many saddles on an average could a saddler make in a day?

Ans. If he got a Morgan saddle, Muley, or Horn, I have made as high as eight a day.

X Int. 117. If I understand you right, you saw no Granger saddles made up at Condit's with plain seats during all the time you worked there. Is that correct?

Ans. To the best of my opinion they always had a quilted seat.

X Int. 118. Did they always have skirts?

Ans. They always had skirts.

X Int. 119. Prior to 1878 did you see Granger saddles made up at Peters, Calhoun & Co.'s with plain seats?

Ans. I have.

X Int. 120. And without skirts?

124 Ans. They always had a skirt.

X Int. 121. What is a plain seat?

Ans. A plain seat is a smooth piece of hogskin brought over the seat of the saddle.

X Int. 122. With no stuffing underneath?

Ans. It is snowed or set over the strainer.

X Int. 123. At Peters, Calhoun & Co.'s, prior to 1878, did you see any Granger saddle made up without having hair under the seat?

Ans. I did not.

X Int. 124. What kind of Granger trees did you see used at Condit's and Peters, Calhoun & Co.'s prior to 1878? If there are any such trees present you may refer to them.

Ans. That is the tree (referring to Respondents' Exhibit Sullivan-Granger Tree).

X Int. 125. Did you see any other kind of Grangers at either place?

Ans. No.

X Int. 126. Prior to 1878 of how many different kinds of saddles did you know made up with the central slot left open?

Ans. About four is all I recollect; the Shackleford, the Boston Kilgore, and the McClellan. I think that is all I recollect.

X Int. 127. How about the Princess?

Ans. I won't be positive about that.

X Int. 128. Prior to 1878 were more or less of the Granger saddles made up with jockies?

Ans. I have seen them made up with jockies before 1878.

X Int. 129. Has the saddle in Complainant's Exhibit Photograph of Granger Saddle any jockey?

Ans. It has not.

X Int. 130. Is the seat of the saddle in Complainant's Exhibit Photograph of Granger Saddle quilted or plain?

Ans. It is a quilted seat.

X Int. 131. Did the Granger saddle which you saw previous to 1878 have the metal piece and ring under the cantle, as shown in Complainants' Exhibit Photograph of Granger Saddle?

Ans. The shank piece. It always had those tuft nails and the ring.

X Int. 132. Did they always have the piece into which
125 those tuft nails are driven, as represented in Complainant's Exhibit Photograph of Granger Saddle?

Ans. I never saw a Granger saddle made without that shank piece.

X Int. 133. Did all the Granger saddles you saw previous to 1878 have such ornamentation as is shown in Complainant's Exhibit Photograph of Granger Saddle?

Ans. They might vary; might be a plain knee and thigh puff or a quilted one.

X Int. 134. When did you first see a photograph the same as Complainant's Exhibit Granger Saddle?

Ans. At Peters & Calhoun's after 1877 or 1878.

X Int. 135. Do Peters & Calhoun make such Granger saddles as are shown in Complainant's Exhibit Granger Saddle?

Ans. They do.

X Int. 136. Do Peters & Calhoun issue or make use of photographs the same as Complainant's Exhibit Photograph of Granger Saddle?

Ans. They do.

X Int. 137. Nowadays?

Ans. Yes, sir. They have photographs taken of every new saddle made.

(Respondents' counsel offers in evidence a leaf from Peters & Calhoun Co.'s catalogue. The parties agree that it is a leaf from Peters & Calhoun Co.'s catalogue and that Complainant's Exhibit Photograph of Granger's Saddle is a photograph of cut No. 619 on that

leaf. The leaf is marked Respondents' Exhibit Leaf of Peters & Calhoun Catalogue, August 18, 1887.)

X Int. 138. Prior to 1878, when saddles were made up with the central slot left open, the leather covering was substantially in direct contact with the trees without setting or snowing, was it not?

Ans. It was. All McClellan saddles made up for the army had slots left open.

X Int. 139. And the leather covering substantially in direct contact with the tree without setting or snowing?

Ans. You can't snow nor set a seat unless the slot is covered.

X Int. 140. And if you do not snow or set a seat the leather covering is substantially in direct contact with the tree, is it not?

126 Ans. It is.

X Int. 141. How many kinds of saddles having peaked cantles did you know of prior to 1878?

Ans. What do you mean by peaked cantle—the extension on the back?

X Int. 142. I mean such a cantle as is on Complainant's Identification Exhibit W or such a cantle as is on the military Jenifer in Respondents' Exhibit Hatheral & Park Catalogue or such a cantle as is on Walter H. Jenifer's patent of June 26, 1860.

(Said patent shown to witness.)

Ans. I have seen a peaked cantle when I was an apprentice.

X Int. 143. How many different kinds of saddles having peaked cantles did you see prior to 1878?

Ans. Not more than two to my knowledge.

X Int. 144. Did you ever work at making saddle-trees?

Ans. I did not.

X Int. 145. In setting or snowing a saddle do you raise the seat more or less by using a greater or less amount of the filling?

Ans. You do.

Redirect examination:

R. D. Int. 146. In answer to cross-question 32 you said any saddle-maker can alter the seat of a saddle with a jockey—raise it or lower it. Do you mean by that answer that it is the jockey by means of which the saddler raises or lowers the seat?

(Objected to as leading and, further, that the witness had the fullest opportunity on cross-examination to explain himself in this regard.)

Ans. He can't do it unless the strainer is in the tree. It is done by the strainer and the jockey.

R. D. Int. 147. Won't you explain, as clearly as you can in words, how the strainer and the jockey together operate to raise the seat of a saddle?

(Same objections.)

Ans. Because the strainer, by straining the tree, raises it on the neck from the wood-work about an inch and a half, and after the

tree is strained the saddler generally forms the jockey to make the saddle look light or heavy.

127 R. D. Int. 148. Were all the Granger saddles of which you had knowledge prior to 1877 provided with strainers when they were made up?

Ans. All that I have ever seen.

R. D. Int. 149. You said the saddle shown in Complainant's Exhibit Photograph of Granger Saddle had no jockey. State whether there is or not anything shown on that saddle which in the construction of the seat with a strainer operates like a jockey to give an elevation to the seat; and, if so, what is such part in the saddle.

Ans. That skirt will answer the same purpose as a jockey. It is what is called a seamed skirt, leaving the jockey off.

R. D. Int. 150. How many Granger saddles have been made at Peters & Calhoun Co.'s since you went there in 1877?

Ans. In the last six years there have been fifteen saddles made; last year not one. I don't recollect how it was from 1877, when I went there, up to 1880, the first three years.

R. D. Int. 151. Are Peters & Calhoun Co. very large manufacturers of saddles?

Ans. They are the largest East.

L. CUNNINGHAM.

NEW YORK, *August* 18, 1887.

Met pursuant to adjournment.

Present: Counsel as before, and the examination of witnesses herein was continued as follows:

CRIST. RADEMACHER, a witness called on behalf of complainant and duly sworn, testifies as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. Crist. Rademacher; am 56 years of age; I reside in Newark, N. J.; I am a saddler.

Int. 2. How long have you worked at your trade as a saddler?

Ans. Since 1849 up to the present time. I served my time with Nichols, Sherman & Co., of Newark; worked there till 1852, then went to Europe for six months, returned and went to work for the same concern. After that, in 1854, while they were taking account

128 of stock, I worked in Philadelphia. After about two months I returned at work*ed* at the same establishment in Newark. In 1855 I went up to Troy and worked about a month while Nichols, Sherman & Co. were taking account of stock, then back to them again till the end of the war, I think, 1864. I went down to the army in 1865 for four months, in the third division, ninth corps, in the quartermaster's department, under General Hartranft. I returned then to work for Nichols, Sherman & Co., and remained there till they dissolved partnership. That was some three or four years. After they dissolved I went to work for Mr. Van Antwerp, on Market street, Newark. I staid there some three or four years; then I went to work for Rothan & Straus, also on Market street. I think I was there a year or more. From there I went with the

Trades Manufacturing Company. I was there about four months till things got dull. From there I was hired to go with George Peters, afterwards of the Peters-Calhoun Co. I was there two or three years. From there I went to work to Hoover & Calhoun, on Broadway, New York. I was there a couple of months or perhaps six weeks. From there I went to Van Antwerp's again for quite awhile; then I went to work for Peters-Calhoun Co. I couldn't tell what year that was. It was about 1875 or 1876; somewheres around there. I remained with them, I think, up to 1880—March, 1880, I think—then I went to work for Mr. Whitman. I have worked there ever since except about two months. Mr. Whitman had charge of matters there at that time.

Int. 3. During your employment as a saddler at the various places you have named, what was your business—that is, what class of work did you do?

Ans. All classes. Nothing outside of saddles. I never worked on harness.

Int. 4. Did you have anything to do about the construction of saddle-trees?

Ans. No, sir.

Int. 5. What kinds of saddles did you make or work on during all this time?

Ans. Made all the best qualities.

Int. 6. Name some of the principal kinds of saddles by the name by which they were known in the trade which you made.

Ans. For Whitman or for Calhoun?

129 Int. 7. During all this time before you went to Whitman.

Ans. Jenifer saddles, Kilgours, Texas saddles, side saddles.

Int. 8. Can you give more by the names they were known by in the trade?

Ans. Morgan, McClellan, Union McClellan.

Int. 9. How about the Jenifer?

Ans. I have made them.

Int. 10. How about what was known as the Muley saddle?

Ans. I have made some of them.

Int. 11. Before 1878 did you make saddles upon saddle-trees having peaked cantles?

Ans. Yes, sir.

Int. 12. What were they called?

Ans. The Jenifer.

Int. 13. Prior to 1878 did you make saddles having a central open slot lengthwise, of the seat, and what were their names?

Ans. Yes; they called them the Boston Kilgour. Only that and the McClellan. I made some Jenifers with open seats covered with hogskins. I made them after the war.

Int. 14. How was it with the Kilgores and the Muleys which you made; were they with open or closed seats?

Ans. I made the Boston Kilgours with open seats. I never made any Muleys with open seats.

Int. 15. When and where did you first see what is known as a Whitman saddle-tree or a Whitman saddle?

Ans. It was in the year 1879, I think.

Int. 16. What did you see first—the tree or the saddle?

Ans. The tree, in Mr. Jacobus's shop. I saw one tree there which he showed me.

Int. 17. How came he to show you the tree?

Ans. He told me he had something new he wanted to show me. This was late in 1879.

Int. 18. How did the tree which he showed you on that occasion compare in shape and appearance with the tree shown in the drawing of the Whitman patent in suit, which drawing I now show you? In looking at figure 1 of this drawing, which is for the saddle, you may understand that the shape shown is substantially the shape of the tree.

130 Ans. I think that is the shape that I saw.

Int. 19. What impression did the tree which he showed you make upon your mind when you saw it?

(Objected to as incompetent.)

Ans. As something new which I never saw before.

Int. 20. In what respect did it impress you as differing from any other trees that you had ever seen?

(Same objection.)

Ans. Different model; different form in every way.

Int. 21. When did you first see a Whitman saddle, and where?

Ans. At Peters's shop; just before I left there in 1880; about February, in 1880.

Int. 22. Did you make the saddles there?

Ans. No, sir.

Int. 23. How many were made there before you left?

Ans. There were several made there by a man by the name of Patterson. I saw him cover the first one.

Int 24. Did you examine any of these saddles?

Ans. I did. I examined one; the first one.

Int. 25. What did you think of it?

Ans. I thought it was a very nice saddle. The foreman showed it to me; his name was Schulteis.

Int. 26. When Mr. Jacobus showed you the first tree which you saw what, if anything, did he say about it?

(Objected to as immaterial and incompetent.)

Ans. He told me it was a patent tree. He said it was an elegant tree and asked me what I thought. He told me a man by the name of Whitman, Col. Whitman, patented it.

Int. 27. When the saddle was made up in Peters' shop, as you have stated, what, if anything, was said about the saddle there and who said it, if anything?

(Objected to as immaterial and irrelevant.)

Ans. All hands pronounced it a perfect tree.

Int. 28. When you went to work for Col. Whitman in March, 1880, as you say, what did you do?

Ans. I made saddles.

Int. 29. Of what design?

Ans. Some trees like that (referring to the drawing of the patent in suit) and some with a round cantle.

131 Int. 30. And from that time to the present time what style of saddles have you been making?

Ans. All styles; all the best quality of work that has been made in Whitman's factory.

Int. 31. Can you tell how large a proportion of their saddles has been of the style shown in the drawing of the patent in suit?

Ans. I couldn't tell that; I never kept an account of anything at that time. They made a large quantity of them. Two workmen once made one hundred and twenty-five of them right in succession.

Int. 32. What has been the quality of the work which has been put onto the saddles of this design by the Whitman Saddle Co. and also the quality of stock used?

Ans. Part of the leather used was black, the best manufactured and made expressly for that purpose. Some of this design have been covered with hogskin; that was what we called "russet." Sometimes hogskin was colored black in order to conceal any little imperfections. We never colored a hogskin black unless it was ordered or had imperfections.

Int. 33. Prior to 1878 had you made a great many saddles by covering wooden trees?

Ans. Yes, sir.

Int. 34. In making such saddles was it or was it not the custom to build up certain portions of the tree by the use of pieces of leather or other material and thereby change the form and appearance of the tree before the covering was put upon the tree to make the saddle?

Ans. No, sir.

Int. 35. Before 1878 were you acquainted with a saddle known as the Granger saddle?

Ans. Yes, sir; I have made them.

Int. 36. Where did you make them, and when?

Ans. At Peters, Calhoun & Co. I can't tell exactly when; it was before 1878. I couldn't tell when.

Int. 37. Could you tell the form of a tree upon which you made these Granger saddles if you should see it now?

Ans. I think I could.

Int. 38. Will you look over the exhibits of saddle-trees here present and pick out the tree which most nearly resembles the trees which you used in making the Granger saddles which you have referred to?

132 Ans. That is the tree (witness designating Respondents' Exhibit Sullivan-Granger Tree).

Int. 39. How were these trees made up to form the Granger saddles of which you speak?

Ans. We strained them—that is, nailed a piece of leather over the slot or gullet—then nailed on a belly—that is, a small piece of leather about four and a half inches long overlapping the edge of the cantle and the bar. Then we would sew the seat, then draw a cloth over it, and then we would awl it to get the right shape of the neck; then we covered it with hogskin.

Int. 40. Look at Complainant's Exhibit Photograph of Granger Saddle and state how that compares in looks with the looks of the saddles which you made at Peters, Calhoun & Co.'s.

Ans. It looks very much like it. That is the saddle, the original saddle, I guess.

Int. 41. Did you ever see any Granger saddles which were made up in any different style than that shown in the exhibit last shown you?

(Objected to as leading.)

Ans. No, sir.

Int. 42. Did you ever see any that were made up with an open seat?

Ans. No, sir.

Int. 43. One of the witnesses in this suit has testified that a saddler could alter the shape of the seat of a saddle with a jockey, raise it or lower it. Is that true or not?

Ans. Yes, sir.

Int. 44. What does the jockey have to do, if anything, about raising or lowering the seat?

Ans. Nothing to do with raising or lowering the seat.

Int. 45. Do you mean that the seat could be raised or lowered just as well in a saddle which had no jockey as in one which had a jockey?

(Objected to as leading.)

Ans. Yes, sir.

Int. 46. Has the saddle shown in the Complainant's Exhibit Photograph of Granger Saddle a jockey or not?

Ans. No jockey.

133 Int. 47. What has it?

Ans. What we call a full flap or skirt. It was originally called a Somerset.

Int. 48. Does the attachment of the flap to the seat of the saddle, as shown in this exhibit, give to the seat substantially the same appearance as the attachment of a jockey would give to the seat?

Ans. The seat remains the same thing with a jockey or a flap.

Int. 49. So far as you know is it or is it not a custom of saddle-makers to change the shape and appearance of saddles to suit the tastes of their customers?

Ans. Yes, sir.

Int. 50. Explain what you mean by your answer.

Ans. Some want the seat flat; some want them soft.

Int. 51. So far as you know is it the custom of saddle-makers to

change or have changed the shape and appearance of the tree on which the saddles are made to suit the tastes of their customers?

Ans. I have never done it and never seen it done.

Int. 52. How were the changes which you spoke of in your last answer but one made by saddle-makers?

Ans. To make it soft you put in more hair and to make it flat build it up more in the belly; put more hair on the belly.

Cross-examination:

X Int. 54. Have you worked for the Whitman Saddle Co. since about March, 1880, with the exception of about two months?

Ans. Yes, sir.

X Int. 55. What were those two months and in what year?

Ans. Either in 1883 or 1884. It was in cold weather.

X Int. 56. Of how many different styles of saddles did you know prior to 1878?

Ans. I could not mention them all. A hundred, if not more.

X Int. 57. Were the shapes of trees altered from time to time?

Ans. Only when some new tree came up.

X Int. 58. Were the shapes of trees altered sometimes by special order?

Ans. I never have seen any altered.

X Int. 59. Did you ever work at making saddle-trees?

134 Ans. No, sir.

X Int. 60. Is there any saddle or saddle-tree here like the Boston Kilgore you spoke of?

Ans. No, sir; I don't see any here.

X Int. 61. Is there any such saddle-tree as your Boston Kilgore shown in Respondents' Exhibit Hatheral & Park Catalogue?

Ans. Yes, sir; marked "Princess."

X Int. 62. Did you know, before 1878, of such trees as "Respondents' Exhibit Hide-Covered Muley Tree"?

Ans. Yes, sir; and covered with hide in the same way.

X Int. 63. Did you know, before 1878, of such trees as "Respondents' Exhibit Kilgore Tree"?

Ans. No, sir; I never saw a tree like that.

X Int. 64. Before 1878 did you know of what you called a Boston Kilgour tree covered into a saddle with the central slot left open and without flaps or jockies?

Ans. No, sir.

X Int. 65. Did your Boston Kilgour have flaps and jockies always?

Ans. Yes, sir.

X Int. 66. But the central slot of the seat was left open?

Ans. Yes, sir.

X Int. 67. And of course the seat was not stuffed?

Ans. It was felted with heavy cloth.

X Int. 68. But the seat was not set or snowed?

Ans. No, sir.

X Int. 69. Was the front end of that Boston Kilgore made up

much as the front end of Respondents' Exhibit Jenifer-McClellan Saddle?

Ans. Yes, sir; but it was not so high in front; it was lower in the head.

X Int. 70. In those Boston Kilgore saddles were the front ends of the bars connected by a bridge in front of the pommel the same as Respondents' Exhibit Jenifer-McClellan Saddle?

Ans. Some were and some were not.

X Int. 71. How did the Jenifer saddle which you knew before 1878 correspond with Respondents' Exhibit Jenifer-McClellan Saddle?

135 Ans. That is about the same thing except that the cantle slopes back a little more than those I knew.

X Int. 72. Does the Whitman Saddle Co. make saddles of different lengths of the same general design of the patent in suit?

Ans. Yes, sir.

X Int. 73. Prior to 1878 did you know of such saddle-trees at the fall-back in Respondents' Exhibit Hatheral & Park Catalogue?

Ans. Yes, sir; we called it a cut-back.

X Int. 74. Was that fall-back or cut-back made up with a closed seat?

Ans. Always.

X Int. 75. In that fall-back or cut-back did the strainer go over the pommel?

Ans. Yes, sir.

X Int. 76. Always?

Ans. Always; all I have seen made.

X Int. 77. Then you never saw any saddle prior to 1878 with a closed seat and a high pommel where the strainer did not go over the pommel?

Ans. Never.

X Int. 78. And that is true no matter what the kind of saddle, is it?

Ans. On that fall-back or cut-back tree referred to.

X Int. 79. Prior to 1878 what kinds of saddles did you know having a strainer and a high pommel in which the strainer did not go over the pommel?

Ans. In this tree (Respondents' Exhibit Hide-Covered Muley Tree) the strainer only comes to the strap hole.

X Int. 80. Any other kinds?

Ans. What they call the Morgan tree, with a head on.

X Int. 81. How many different Granger saddles did you see prior to 1878?

Ans. I never saw any others than what I saw in Peters's.

X Int. 82. How many of those?

Ans. I couldn't tell. I suppose I have seen sixty or eighty.

X Int. 83. Were some of those made with a plain seat?

Ans. Yes; there were some made with plain seats.

X Int. 84. Does Complainant's Exhibit "Photograph of Granger Saddle" show a quilted seat?

136 Ans. Yes, sir; as perfect as can be shown in that picture.

X Int. 85. In making up the Granger saddles at the Peters, Calhoun concern, were they set or snowed on top of the pommel?

Ans. They never set any of them. They were all snowed.

X Int. 86. Were they snowed on top of the pommel?

Ans. Yes, sir.

X Int. 87. Do you know what styles of saddles the Whitman Saddle Co. mark with the date of the patent in suit?

Ans. No, sir; I know nothing about it.

X Int. 88. In snowing a saddle the hair is laid on loosely, is it not?

Ans. It can't be laid on any other way.

X Int. 89. Then in snowing over a pommel the top of which is covered with an iron brace, how is this loose hair kept in place over that iron brace?

Ans. I never saw any snowed over an iron.

X Int. 90. Look once more at the fall-back in Hatheral & Park's catalogue. Has it not an iron brace over the pommel?

Ans. Yes, sir.

X Int. 91. Did you snow over such iron braces?

Ans. A strainer covers the iron.

Redirect examination:

R. D. Int. 92. You said some of the Granger saddles at Peters & Calhoun Co. were made up with a plain seat. What do you mean by that?

Ans. This picture in question has got a roll on behind which is quilted. A plain seat has no roll on the cantle and no stitching on the pommel.

R. D. Int. 93. In other respects were the Granger saddles of the same style as that shown in the photograph "Complainant's Exhibit Granger Saddle"?

Ans. Same style, only there were no puffs on the skirt.

R. D. Int. 94. You were asked how the Jenifer saddles which you made compared with Respondents' Exhibit Jenifer-McClellan Saddle and you replied that the cantle did not turn over so much as in the exhibit. I now ask you how the length of the seat of the

137 Jenifer saddles made by you compared with the length of seat in Respondents' Exhibit Jenifer-McClellan Saddle.

(Objected to as immaterial.)

Ans. I have made them of different sizes from sixteen inches up to seventeen, which is the largest, I think, I ever saw.

R. D. Int. 95. What is the length of Respondents' Exhibit Jenifer-McClellan Saddle?

Ans. That is a seventeen-inch tree. (Witness measured with a tape measure.)

R. D. Int. 96. What is the length of Respondents' Exhibit Jen-

ifer-McClellan Tree measured in the same way as you measured the saddle?

Ans. Sixteen.

C. J. RADEMACHER.

PETER J. VOGEL, a witness called on behalf of complainant and duly sworn, testifies as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. Peter J. Vogel; 50 years of age; I reside at Newark, N. J.; I am a saddler.

Int. 2. How long have you been engaged in business as a saddler? And state as briefly as you can at what places you have worked.

Ans. Ever since 1852, thirty-five years. The first place I worked was Nichols, Sherman & Co., where I learned my trade. When the war broke out I went to the Brooklyn navy yard, in the ordnance department; staid there till the war ended; then went back to Nichols, Sherman & Co.; staid there till they dissolved partnership, which was about 1866 or 1867; then I went to work in Peddie's trunk and bag factory, at Newark, and staid there about a year; then worked for Rothan & Straus at Newark; I was with them about six months; then I went to the Trades Manufacturing Company and did the cutting; from there I went to the Newark Trunk and Bag Company and cut bags and satchels there; from there I went to Hoover & Calhoun, in New York, and made riding saddles; from there I went to the Pioneer, in Newark, and cut bags and satchels; from there I went to Rothan & Straus, Grand street, New York. They afterwards
138 moved to Houston street, and I remained with them until they failed, in 1877; from there I went to Smith, Bourn & Co., Hartford, Conn.: made riding saddles and helped cut them. I remained there till 1884 and came to work for the Whitman Company, and have remained there till the present time.

Int. 3. What styles of saddles did you make prior to 1878, and by what names were they known in the market? Give the names of some of the more important ones.

Ans. I made English-style saddles, Morgan saddles, both Muley and horn saddles, Beauregard saddles. There are so many I don't know as I can mention them all. Some were called Mexican, some California, some Texas. I make Kilgours; I made the McClellan saddles and the Jenifer.

Int. 4. When did you first see a Whitman saddle or a Whitman saddle-tree, and where did you see it?

Ans. I first saw the Whitman saddle-tree in Smith & Bourn's about 1881 or '2.

Int. 5. Were Smith, Bourn & Co. making Whitman saddles at that time?

Ans. No, sir.

Int. 6. Were you there when they began to make them?

(Objected to as leading.)

Ans. I was.

Int. 7. When did they begin to make Whitman saddles, if at all?

Ans. At that time, in 1881 or 1882.

Int. 8. Did you see the first Whitman saddle-tree that was brought into Smith, Bourn & Co.'s shop?

(Objected to as incompetent.)

Ans. Yes; I made the first saddle on it.

Int. 9. How did the first tree that you saw compare in shape and appearance with the tree shown in the drawing of the Whitman patent in suit?

(Counsel says to witness: "In answering this question figure No. 1 of this drawing represents a saddle, but that you may consider the shape of the tree to be substantially that of the saddle in figure 1.")

Ans. The one I made looked just like that drawing.

Int. 10. When you first saw the Whitman saddle-tree how
139 did it impress you as compared with any other trees which you had previously seen?

Ans. I considered it a very beautiful tree, something that I never saw before.

Int. 11. Do you recollect how many saddles were made up by Smith, Bourn & Co. from these Whitman trees at the time the first ones were made?

Ans. I made two or three at first and others made some after that. We made various styles of the Whitman saddles.

Int. 12. When the first saddles were finished, in shape and appearance like the drawing of the patent in suit which has been shown you, were there any comments or talk made about them by the workmen or by the members of the firm, if you know?

Ans. They thought it would make a very nice saddle. Some made the remark that it was a very nice saddle. When I was alone in the room I did not come in contact with and very seldom saw the rest of the men. Mr. Bourn thought it was a very nice tree when he showed me the trees. He thought they came very high in price.

Int. 13. Who had charge of the factory at that time?

Ans. The foreman's name was Miller.

Int. 14. Did Mr. Bourn give directions in regard to the making of saddles at all?

Ans. Yes.

Int. 15. How was it about the making of this first Whitman saddle after he showed you the tree?

Ans. I think we made it according to the picture in the catalogue. I don't remember that he gave me any instructions on the No. 1 tree any more than that.

Int. 16. Do you know where Smith, Bourn & Co. obtained the saddle-trees which they first used in making Whitman saddles?

(Objected to as incompetent.)

Ans. From the Whitman Saddle Co.

Int. 17. Do you know whether or not the Whitman Saddle Co. sent a Whitman saddle to Smith, Bourn & Co. at or about the time they sent the first trees?

(Same objection.)

Ans. They did.

Int. 18. Did you use that saddle as a model of the style of
140 making up the first Whitman saddles that were made at Smith & Bourn's?

Ans. Yes; I made one just like it.

Int. 19. Was that saddle of the design of the saddle shown in the drawing of the Whitman patent?

Ans. The one I have reference to that they showed me to follow was on the No. 6 tree.

Int. 20. State whether the Whitman Co. did not send a saddle made up on a No. 1 tree in shape and appearance like the saddle shown in the drawing of the Whitman patent.

Ans. I believe they did.

Int. 21. Were the first Whitman saddles which you made at Smith, Bourn & Co.'s in shape and appearance like the saddle shown in the drawing of the Whitman patent?

Ans. The first saddle I made on a No. 1 tree was like it.

Int. 22. Was that the first Whitman saddle that you made there?

Ans. I think we made the No. 2 and No. 6 saddle first; the No. 2 and No. 6 tree.

Int. 23. During the time that you worked at Smith, Bourn & Co.'s how many Whitman saddles in shape and appearance like the saddle shown in the drawing of the patent were made there, according to the best of your knowledge and recollection?

Ans. I don't know as I could guess on that. I think on the No. 1 tree there was about, say, two or three a week; probably more.

Int. 24. And did they continue to make that style or design of saddle until you left there?

Ans. They did.

Int. 25. State whether any of the saddles of the design shown in the drawing of the patent, which were made at Smith, Bourn & Co.'s while you were there, were provided with flaps and jockeys like those on the saddle now shown you.

Ans. I am not positive whether they were made with flaps and jockeys on the No. 1 tree.

(Saddle shown witness is Complainant's Exhibit C.)

Int. 26. Look at Complainant's Exhibit C and state how the Whitman saddles that were made on the No. 1 tree at Smith, Bourn
& Co.'s factory while you were there compared in shape and
141 appearance with this exhibit. In answering the question you may leave out of consideration the flaps and jockeys on the exhibit.

(Objected to as immaterial and irrelevent.)

Ans. When it was made up I think it looked like that saddle without skirts and jockeys.

Int. 27. Was there any difference in shape and appearance of the saddles which they made upon the No. 1 Whitman tree and the exhibit just shown you; and, if so, what was it?

(Same objections.)

Ans. They made first the second quality. I generally made the best quality of them and other men made the poorer quality.

Int. 28. Leaving out of consideration the quality of the leather covering and the quality of the workmanship, was there any difference in the shape or form of the saddles made upon the No. 1 tree at Smith & Bourn's factory while you were there and that of the exhibit shown you?

(Same objections.)

Ans. Leaving out skirts and jockeys, there is no difference.

Int. 29. Prior to 1878 were you familiar with a saddle known as the Granger saddle?

Ans. I knew that there was a Granger saddle made. I had seen them before or about 1878. I never made them.

Int. 30. Where did you see them?

Ans. At Peters, Calhoun Co.

Int. 31. How was the Granger saddle which you saw made up? State briefly.

Ans. With closed seats, the seat covered with hair, snowed, Somerset skirts, no jockeys. Those that I saw had quilted puffs, the seat quilted behind and front.

Int. 32. How did it compare in appearance with the representation in the photograph now shown you?

Ans. It looked like that; similar to that.

Int. 33. In saddles made upon wooden saddle-trees, is it or is it not customary to change the shape of the finished saddle so that it does not conform to the shape of the tree?

Ans. It is not customary to change the shape of the saddle.

Int. 34. What are those saddles called in which the shape of the tree is not changed in the finished saddle?

142 Ans. Where the tree is covered with an even thickness of leather all around.

Int. 35. Are they called close-covered saddles among workmen?

Ans. Yes.

Int. 36. And does that term distinguish them from saddles in which the seat is set or snowed on?

Ans. Yes, sir.

Cross-examination:

X Int. 37. How many different styles of saddles did you know of before 1878?

Ans. I knew of over a hundred, but I could not recall them all to memory.

X Int. 38. How many Granger saddles did you see before 1878?

Ans. Probably two or three.

X Int. 39. Did you see Granger saddles anywhere else than at the Peters, Calhoun concern before 1878?

Ans. No.

X Int. 40. Is the No. 6 Whitman tree mentioned in your 19th answer illustrated as "Tree No. 6," page 7 of Respondents' Exhibit Whitman Catalogue No. 4?

Ans. It is.

X Int. 41. Was that tree marked with the date of the patent in suit?

Ans. I don't think there was a date on it. There was a label on it mentioning the length and width of the straps.

X Int. 42. Did the Whitman Co. send a No. 6 saddle?

Ans. Yes; a saddle made on a number 6 tree.

X Int. 43. Was it a closed seat like that in the cut at the top of page 19, Respondents' Exhibit Whitman's Catalogue No. 4?

Ans. Yes; the one I made.

X Int. 44. Was the seat of that No. 6 saddle set or snowed.

Ans. It was snowed and a cloth drawn over it and evened off with an awl and strained.

X Int. 45. Does it substantially alter the design of a Whitman saddle, whether it be made with a closed or open seat?

(Objected to on the ground that witness has not been called as an expert on the interpretation of the patent in suit, and counsel does not know that he has ever seen the patent.)

143 Ans. It alters the design that much that it raises the seat a little higher, as much as the strainer and hair will alter it.

X Int. 46. Would you recognize any of the Whitman saddles whether the seat were opened or closed?

Ans. I would.

X Int. 47. Does the Whitman Saddle Co. sometimes make their saddle on tree No. 1 with a closed seat?

Ans. They do.

X Int. 48. Is the Whitman tree No. 1 shown on page 6 of the Respondents' Exhibit Whitman Catalogue No. 4?

Ans. It is.

X Int. 49. Does the Whitman Saddle Co. sometimes make their saddle on their tree No. 1 with the seat snowed or set?

Ans. Yes, sir.

X Int. 50. Taking two Whitman trees No. 1 and making one with a closed seat (set or snowed) and the other with an open seat, do you think there is any material difference in the design of the two saddles?

Ans. I don't think there is a great deal of difference.

Redirect examination:

R. D. Int. 51. Do you mean to say in your last answer, which I will read to you (together with the question), that if you take two Whitman No. 1 trees which are alike and make one of them into a saddle with an open seat in the ordinary way of making up the

Whitman open-seated saddle and make up the other with a closed seat in the ordinary way of making the closed-seat saddle that those two saddles will present the same appearance to the eye?

(Objected to as immaterial.)

Ans. They won't present the same appearance to the eye, because by being a closed seat it leaves it higher over the centreslot; being also stuffed, it makes the seat a little higher.

R. D. Int. 52. In the two kinds of saddles named in the last question does it or does it not appear by just looking upon the saddles that one is a saddle with an open seat and the other a saddle with a closed seat?

(Same objection.)

Ans. I can distinguish them right away one from the other.

PETER J. VOGEL.

144 WILLIAM C. C. MEHLBACH, being called on behalf of complainants and duly sworn, testifies as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. William C. C. Mehlbach; 36 years of age; I reside in Brooklyn; I am secretary and treasurer of the Whitman Saddle Co.

Int. 2. State whether you ever had an interview with Mr. John S. Sullivan, one of the officers of the J. S. Sullivan Saddle-Tree Co.; and, if so, when and where.

Ans. In the early spring of 1886 at his office in Jefferson City, Mo.

Int. 3. State the circumstances of that interview and what was said by you and Mr. Sullivan and what was done, if anything.

(Objected to on the ground that no ground for this question was laid in the direct or cross examination of John S. Sullivan.)

Ans. He accompanied me to their factory and showed me different styles of trees which they are making. My attention then was called to two trees and I asked him what they were. He pointed to the one with a tail, calling it a No. 1 Whitman tree, and the other one with a round cantle, calling it a No. 6 Whitman tree. He handed them over to me and praised them as being the most beautiful tree he was making. When reaching his office again he handed this catalogue to me and I could not see the Whitman trees referred to mentioned in it. I asked him to make a memorandum in his catalogue giving prices for them by the dozen, which he did, quoting the No. 1 Whitman tree at twenty-four dollars and the No. 6 Whitman tree at twenty-two dollars, when I remarked to him whether this was not a rather steep price for a tree and why so much higher than the other gentleman's trees which he had shown me. He said that the construction of the tree was necessarily an expensive one, and that it was really a very fine tree and worth the money.

Int. 4. You say you asked him to make a memorandum in the catalogue he gave you telling the prices of the Whitman trees. Did he do it, and, if so, how did he do it?

(Same objection.)

Ans. He took this catalogue, which he had just handed to me, out of my hands, laid it on his desk, and wrote the words as they appear in this catalogue himself on page 50.

145 Int. 5. State how much of the writing on said page was done by Mr. Sullivan in your presence on that occasion.

(Same objection.)

Ans. The writing, which reads as follows:

"Park (Whitman)

No. 1	24
No. 6	22"

I do not recollect whether he made the figures in purple marks near the bottom of the page. The figures in writing, in lead pencil, underneath the word "Whitman," were made by me.

Int. 6. Before you had this interview with Mr. Sullivan did you know that he was making and putting on the market a saddle-tree like the design shown in the patented drawing of the Whitman patent in suit?

(Same objection.)

Ans. We had been made aware of it, though I never saw one until accidentally I came across one at Jefferson City during my visit there and before calling on Sullivan. It was a saddle belonging to the secretary of State of Missouri, who, during a conversation with him, spoke in high praise of the Whitman saddle and wanted me to look at the one in his barn. I went with him to his barn, looked at it, and, though it appeared to be in every respect like a Whitman tree, I soon discovered that it was not made by ourselves, when he explained to me that Mr. John S. Sullivan had made him a present of it.

(So much of this last answer as relates to the sayings of the secretary of Missouri is also objected to as incompetent.)

Int. 7. Did you know before this interview with Mr. Sullivan that he or his company were designating saddle-trees by the name of Whitman trees?

(Same objection as to the last question.)

Ans. I knew of it.

Int. 8. Did you ever have an interview with Mr. H. A. Winship, of Boston, relating to certain saddles which he had sold and which had been returned to him? If so, when was it and where?

(Objected to as incompetent.)

Ans. Last fall, during September of 1886, I called on Mr. H. A. Winship, in Boston, at his store, trying to sell him saddles.

146 Int. 9. State what conversation, if any, took place in regard to certain sold and returned saddles.

(Same objection.)

Ans. He said that he had always thought very highly of the Whitman saddle and pushed them because he looked upon them as being the best in the market; that he was sorry to see that we had commenced running our goods down, making them inferior; that after considerable exertion he had sold eight or nine Whitman saddles to the Boston police, which had all been condemned by them and came back to him because they were no good. I then requested him to show me the saddles, which he kept in the basement of the store, which he did. I at first sight felt quite perplexed, because they looked in every respect like Whitman's saddles, but after some examination to which I subjected these saddles upstairs in the store where there was more light I recognized them to be, especially by the stirrup bars, Whitman trees of the J. S. Sullivan make. I told Mr. Winship about this. He felt better toward us and very much blamed the people that had imposed on him.

Int. 10. How careful an examination did you give the saddles before you came to the conclusion that they were not the genuine Whitman saddles?

(Objected to as immaterial.)

Ans. In order to find out whether it was a genuine Whitman saddle or not I undid part of the leather covering the tree, and, seeing the surface of the tree and the peculiar style of stirrup bar, I could not help concluding from what I had seen at Jefferson City that it was the same kind of tree that Mr. John S. Sullivan represented to be the No. 1 Whitman tree.

Int. 11. And was it not until you had made such examination that you were convinced that the saddles were not genuine Whitman saddles?

(Same objection.)

Ans. I could not have told without a thorough examination of the saddle whether it was or was not a genuine Whitman saddle.

Int. 12. Did you obtain one of those saddles, remove the covering from the tree and examine the tree?

(Same objection.)

Ans. Yes; we did.

147 Int. 13. How did the tree compare with the tree which J. S. Sullivan showed you at Jefferson City and designated as Whitman tree No. 1, as you have stated?

(Same objection.)

Ans. It was the same make and shape.

Int. 14. Look at the saddles now shown you, marked Complainant's Exhibits A and C, and state how those saddles compare in shape and appearance with the ones which Mr. Winship showed you, as you have previously stated.

(Same objection.)

Ans. They are the same thing which I saw at Mr. Winship's place.

Int. 15. Are they or not the same as the one from which you removed the covering and examined the tree, referring now to the shape and appearance of the two exhibits and to the shape and appearance of the saddle from which you removed the covering when you first saw it?

(Same objection.)

Ans. These two saddles here and the one which was sent to our store, from which we removed the covering, are all of the same shape and appearance and make-up.

Int. 16. I show you now Respondents' Exhibit Whitman Saddle and ask you to state whether or not in your judgment that saddle is a correct embodiment of the design shown in the drawing of the Whitman patent in suit, and give the reasons for any answer you may make.

Ans. I consider this saddle in every respect a good representative of the Whitman design, excepting it has been marred by a deep cut running slantingly towards the pommel—towards the part which necessarily affects the appearance considerably.

Int. 17. When did the respondents, Smith, Bourn & Co., first begin to make Whitman saddles upon trees furnished them by your company?

Ans. In about 1881 or 1882.

Int. 18. After this time did you have any conversation with any member of respondents' firm relating to the value of saddles or of saddle-trees like those shown in the drawing of the patent in suit? If so, what was it?

148 (Objected to as not rebuttal evidence. If any other person besides Benjamin A. Bourn is meant by the question, also in that case incompetent, and if otherwise that no basis for the question is laid in the examination of Benjamin A. Bourn.)

Ans. I think it was some time about the latter part of 1882 when I called on Smith, Bourn & Co.'s New York concern asking them to make up a few cheap lady saddles on our lady's trees. Mr. Bourn, who happened to be in the office, remarked that a cheap saddle could not be made on our ladies' tree on account of the puffs upon the tree and the expensive workmanship involved in making such saddle, but they had got so now that they could make a nice cheap saddle on the Whitman's men's tree, and that was really a beautiful tree in every respect, fulfilling what we claimed for it, but that he thought they ought to be made of hard wood, as the tacks would then better stick in the wood.

Int. 19. What tree did he refer to by the Whitman's men's tree?

(Same objection.)

Ans. Our No. 1 Whitman tree.

Int. 20. Is the tree shown in the drawing of the Whitman patent

in suit the No. 1 Whitman tree, and is the saddle shown in the drawing made upon the No. 1 Whitman tree?

Ans. Yes, it is.

Int. 21. The witness Mr. Vogel has stated that the Whitman Company have made saddles upon the No. 1 Whitman tree having closed seats; if that is correct, please state to what extent they have made such saddles.

Ans. We never made a Whitman saddle, as shown in the drawing of the patent in suit, with a closed seat, but I think we have made a few—in fact, exceedingly few—with closed seats and flaps.

Int. 22. Have you ever given any attention to the degree to which the construction of a saddle upon one of your No. 1 trees with a closed seat will change the appearance and shape of the tree from what it would be if the saddle were made up with an open seat, as compared with the change in the shape and appearance of other saddles when made up upon other kinds of trees than the Whitman, with closed and open seats?

(Objected to as leading and argumentative.)

Ans. I find that all other wooden trees made up with a
149 closed seat will appear altogether different from what they do when made up with open seats; as, for instance, the McClellan saddle. This is not the case with the Whitman saddle. I will hold up in my hands—in one hand a closed-seat Whitman saddle, and in the other hand an open-seat Whitman saddle, and holding up both hands it would be hard to tell whether it was a closed-seat or an open-seat saddle. This is because, no matter whether an open or closed seat, we always conform to the lines of the tree, with a closed seat making the under layer as little as possible.

Adjourned till Saturday, the 20th, at 9½ a. m.

SATURDAY, *August 20th*, 1887.

Met pursuant to adjournment—present, counsel as before—and the examination of Mr. MEHLBACH was continued as follows:

Cross-examination:

X Int. 23. When you had this interview about which you have testified with John S. Sullivan, were you then secretary and treasurer of the Whitman Saddle Co.?

Ans. Yes, sir.

X Int. 24. When you approached John S. Sullivan at this interview, did you inform him of that fact?

Ans. No.

X Int. 25. When you approached John S. Sullivan at this interview, did you give him your name?

A. I think I did.

X Int. 26. Are you sure that you did?

Ans. I am pretty sure.

X Int. 27. What name did you give him as being your name when you thus approached him?

Ans. Mehlbach.

X Int. 28. When you thus approached John S. Sullivan, did you tell him where you lived?

Ans. I think not.

X Int. 29. When you thus approached John S. Sullivan, did you tell him you were connected with the saddle business?

150 Ans. Yes, sir.

X Int. 30. What did you tell him you wanted of him or came to see him for?

Ans. Being a manufacturer of saddles and having heard of their concern, I desired to see his various styles of trees.

X Int. 31. During that interview with John S. Sullivan did you give him a business card?

Ans. No.

X Int. 32. During that interview with John S. Sullivan did you show him no business card whatever of any kind?

Ans. Without being willing to swear to the contrary, I believe not.

X Int. 33. Did you not present him a business card which was not the business card of the Whitman Saddle Co., but was the business card of some other concern?

Ans. My last answer covers it.

X Int. 34. I desire a direct answer to my last question. I therefore repeat it.

Ans. You have got it.

X Int. 35. If you did present to him a business card at that interview, was it the card of some other concern beside the Whitman Saddle Co.?

Ans. Not being in the habit of sailing under false colors and there being no occasion to change my name, which so far has not been stained, I am pretty sure that no change of cards took place.

X Int. 36. Are you sure that you did not at that interview show John S. Sullivan some business card?

Ans. You have got my complete answer to the question.

X Int. 37. Question repeated.

Ans. I have answered the question.

X Int. 38. Question again repeated.

Ans. It is possible that I may have given him my personal card.

X Int. 39. Is it not possible that you showed him a business card?

Ans. I think not.

X Int. 40. Are you positive about that?

Ans. I am as positive of that as I can be.

X Int. 41. The conversation that you have detailed in

151 your direct testimony with John S. Sullivan while he was evidently ignorant of the fact that you were connected with the Whitman Saddle Co., did it not?

Ans. I think so—in fact I know it.

X Int. 42. Did you represent yourself to John S. Sullivan as desiring to buy saddle-trees?

Ans. When I told him that I was a manufacturer of saddles and

wanted to see his different styles of trees, I think he had the impression that I might be a probable buyer because of his willingness to show me his stock and speaking to me frankly of the superiority of the different styles of trees.

X Int. 43. Did you not, either by speech or card or some other way, give John S. Sullivan to understand that your place of business was somewhere else than New York city?

Ans. I remember that my intention was not to apprise him of my being a representative of the Whitman Saddle Co., for had I done so it would have interfered with my obtaining information which I did obtain from him, and though I am not quite sure whether I named any other city, yet I would have felt perfectly justified in doing so, as we are located in several cities in the Union.

X Int. 44. What business took you to Jefferson City at this time?

Ans. To obtain the information which I received, which was that the John S. Sullivan Tree Company was paying forty cents a day for prison labor; the State of Missouri, throwing in steam and the use of a factory for nothing, was making bogus Whitman trees and selling them as such, just trying their hardest to destroy our labor and exertions.

(Respondent's counsel states that such cross-examination as he makes of this witness as to matters objected to on the direct examition is made subject to the action of the court on such objections.)

X Int. 45. Did Sullivan introduce the conversation concerning Whitman trees or did you?

Ans. When going through the factory the two Whitman trees already referred to in my testimony were lying together with other sample trees. I asked him what those were and he took them up, naming the one with the tail the No. 1 Whitman tree and the other one the No. 6 Whitman tree.

152 X Int. 46. And did you ask the prices of those trees of Sullivan?

Ans. I did.

X Int. 47. Did you ask him to write the prices in the catalogue he gave you?

Ans. My request to him to do so was after we had reached his office and he had handed this catalogue to me.

X Int. 48. Was he sitting at his desk when he wrote the word "Park" with the numbers and prices?

Ans. My impression is he was standing.

X Int. 49. Did you not say in your direct testimony that he sat at his desk and wrote this?

Ans. I would not be held strictly accountable for knowing whether he sat or stood. My impression, as I said, is that he stood, but he wrote the words referred to after he had placed the catalogue on the desk, and, as the position of the desk in my mind now is, the desk is a high one and he stood at it.

X Int. 50. Did he not first write the word "Park" with the numbers and prices and subsequently add the "(Wittman)"?

Ans. I don't know.

X Int. 51. Did he add the "(Wittman)" at your suggestion?

Ans. No, sir.

X Int. 52. Before you left did Sullivan discover who you were?

Ans. He did.

X Int. 52. And did he accuse you of practicing deception on him?

Ans. I remember his saying that after I had left it entered his mind that I was representing the Whitman Saddle Co., and that he and his concern had more money than the Whitman Saddle Co. and would kill us if we commenced fighting the patent.

X Int. 53. Did he accuse you of practicing deception of him?

Ans. I don't remember, but he acted like a man who had just been caught at showing his hand in a highly questionable game.

X Int. 54. Did Sullivan's discovery of whom you were come about by your voluntarily stating who you were or by his suspicions becoming aroused and he asking you?

Ans. I don't remember.

X Int. 55. Did you see the catalogue from which Respondents' Exhibit "Leaf from Peters-Calhoun Catalogue" was cut?

153 Ans. I can't tell.

X Int. 56. You have seen Peters, Calhoun Co.'s catalogue, have you not?

Ans. I have.

X Int. 57. Is the book I now show you that catalogue?

Ans. It looks like it.

X Int. 58. Which of the trees on page 262 of that catalogue do you understand to be the one inside of the saddle shown on page 123?

Ans. I don't understand that any of the trees shown on that page are in that saddle.

X Int. 59. Why?

Ans. The shape and appearance of the saddle don't admit of such a supposition.

Catalogue last referred to is offered in evidence and marked Respondents' Exhibit Peters & Calhoun Catalogue, August 20, 1887.

Redirect examination:

R. D. Int. 60. In answer to 52d cross-question you say, "I remember his (referring to Sullivan) saying that after I had left it entered his mind that I was representing the Whitman Saddle Co.," &c. Who did he say this to and when?

Ans. He said this to me and a lawyer who was accompanying me and later in the afternoon of the same day when I had first seen him.

R. D. — 61. Then you had, as I now understand, a second interview with Mr. Sullivan?

Ans. I had.

(Witness here says that he desires his answer to the question

where he speaks of the secretary of the State of Missouri speaking in high praise of "the" Whitman saddle it should be "his" Whitman saddle.)

(Counsel for complainants offers in evidence the catalogue of the J. S. Sullivan Saddle Tree Co. produced by the witness Mehlbach and shown J. S. Sullivan during his cross-examination and at that time marked for identification as Exhibit F, and the same is hereby marked Complainant's Exhibit J. S. Sullivan Saddle Tree Co.'s Catalogue, on page 50, August 20, 1887.)

WM. C. C. MEHLBACH.

154 HENRY F. NEWBURY, being recalled on behalf of complainants, testifies as follows:

Int. 1. Are you the Henry F. Newbury who has heretofore testified in this case on behalf of complainant?

Ans. I am.

Int. 2. Look at Respondents' Exhibit Enlarged Drawing from Whitman patent in suit, and consider that Clarence E. Buckland, one of respondents' witnesses, has testified that said drawing is an accurate enlargement from figure 1 of Respondents' Exhibit "Duplicate of Whitman Patent Photograph," and state what kind of drawing or enlargement you understand that to be.

Ans. What is known as a mechanical enlargement.

Int. 3. State whether or not the said exhibit enlarged drawing, &c., correctly represents an enlarged view of figure 1 of the photograph of the Whitman patent in suit, and give reasons for any answer you may make.

Ans. It is not a correct enlargement of said figure 1 of the patent in suit. A comparison between the drawing marked Respondents' Exhibit "Enlarged Drawing from Whitman Patent in Suit," with the photograph marked Respondents' Exhibit "Duplicate of Whitman Patent Photograph" discloses several inaccuracies in the said enlarged drawing. The said duplicate of the Whitman patent photograph I understand to be the one from which Mr. Buckland made the said enlarged drawing. I find that that portion of the Whitman patent photograph which is a copy of figure 1 of the patent in suit is divided off into squares by running lines at right angles with each other over that portion of the photograph, and the said lines are numbered from one to forty-seven lengthwise of the photograph and from one to thirty-seven crosswise. The lines are about one-eighth of an inch apart from each other. I understand from the testimony of Mr. Buckland that in making Respondents' Exhibit Enlarged Drawing he first made Respondents' Identification Exhibit 1 to 3, and then made a tracing from that in order to make said enlarged drawing. The said respondents' identification exhibit I find to be divided off in lines apparently at equal distances apart and numbered lengthwise of the drawing from one to forty-seven and crosswise of the drawing from one to twenty-eight. The lines on this identification exhibit are about one-half an inch apart. From this it

155 would appear that the enlargement was four times—that is, the identification exhibit and enlarged drawing was four times—

the size of figure 1 of the photographic drawing of the patent in suit. I find that line 1 running lengthwise in both the patent photograph and identification exhibit just touches the uppermost part of the pommel in each case. I also find that line 47, running crosswise of both the patent photograph and identification exhibit, just touches the extreme front portion of the saddle in each case. I will mark with ink upon the upper right-hand corner of the identification exhibit the lines which had heretofore been unmarked or marked in pencil. I find that line 38, running lengthwise of the patent photograph, comes between the extreme front of the saddle and the part marked *b*—that is, it passes through the light shaded part near the point marked *b*, while in the identification exhibit the corresponding line passes outside of the corresponding point by nearly one-sixteenth of an inch—that is, about an eight- of an inch nearer the cantle than it should do, showing an inaccuracy of the location of the line on the identification exhibit, which I will mark *b*, to that extent. The extreme top portion, marked *b* in the photograph, comes about one-third of the distance between lines 3 and 4, which run lengthwise of the patent photograph, while in the identification exhibit the corresponding line is higher—that is, nearer line 4, showing an inaccuracy at that point of nearly an eighth of an inch. I find that the identification exhibit does not correspond with the photograph where the seat line and the line *b* join each other on the opposite side of the slot from the point *c* on the patent photograph. The line at that point is of a much longer curve on the patent photograph than on the identification exhibit—that is, the curve starts nearer the top portion of the line and meets the seat line at a point nearer the cantle and should be about the same distance from the junction of the crosswise lines numbered 36 and 37 with the lengthwise lines marked 5 and 6, while in the identification drawing the curve does not start near as close to the lengthwise line 5 as it should do, and reaches the seat line almost before it crosses the crosswise line 37, while if it was a correct enlargement of the patent drawing, this curved line would not reach the seat line until it almost struck crosswise line 36, and hence there is an inaccuracy at this point. I will mark this point on the identification exhibit *w*. The patent photograph and the identification exhibit both show a line on each
156 side of the slot which runs longitudinally through a portion of the centre of the saddle. The upper one of these two lines in the patent photograph appears to start near the junction of crosswise line 36 and lengthwise line 6, and passing down almost touches the junction of crosswise line 35 and lengthwise line 7, then passing on through the junction of crosswise line 34 and lengthwise — 8; thence on and above the junction of crosswise line 33 and lengthwise line 9, being nearly one-quarter of the distance between the junction of the two lines last named and the junction of crosswise line 32 and lengthwise line 8, and thence gradually curving until near the junction of crosswise line 23 and lengthwise line 12, where it appears to reach its lowest point—that is, at this point this line is about one-quarter of the distance between lengthwise lines 11 and

12, being nearer 12 than 11. The corresponding line of the identification exhibit appears to start near the crosswise line 37 and about one-third of the distance between lengthwise lines 5 and 6, being nearer 6 than 5; thence passing down and crossing crosswise line 36, nearly one-half of the way between lengthwise lines 6 and 7, being a little nearer 6 than 7; thence on and crossing crosswise line 35, about one-third the distance between lengthwise lines 7 and 8; thence on and almost passing through the junction of crosswise line 34 and lengthwise line 8; thence on and above the junction of crosswise line 33 and lengthwise line 9, being about one-third or more above such junction, where it crosses line 33; thence gradually curving until it crosses crosswise line 24, where it appears to reach its lowest point and to be about midway between lengthwise lines 11 and 12 instead of about one-quarter of the distance, as it should be, if a correct enlargement of the patent photograph. It will be observed that at several of these points named the identification exhibit is not what it should be, if it were a correct enlargement of the patent photograph.

I find that the lower longitudinal slot line, where that and the upper one cross crosswise line 23 in the patent photograph, to be less than one-sixteenth of an inch, while at the corresponding point of the identification exhibit the distance is considerably over three-eighths of an inch, where it should be considerably less than one-quarter of an inch, if the said exhibit was a correct enlargement of the photograph. At the point where the two slot lines cross crosswise line 36 they are about where they should be, so far as
157 the distance between the two lines are concerned, but not being in a proper relation to other portions of the drawings as heretofore pointed out by me. I will mark the upper slot line of identification exhibit just referred to with *x* (small) and the lower one with *y* (small). Respondents' Exhibit Large Drawing from Whitman Patent in Suit appears to be a substantially correct tracing of Identification Exhibit Number 3; hence inaccuracies which I have pointed out between patent photograph and Respondents' Identification Exhibit Number 3 are found in said enlarged drawing, and because of such inaccuracies said enlarged drawing is not a correct mechanical enlargement of figure 1 of the patent in suit. I have not compared other portions of the said enlarged drawing and figure 1 of the patent to find out whether said enlarged drawing was a correct drawing or not, except to note that crosswise line 1 of both the patent photograph and identification exhibit touches the extreme point of the cantle in each case, showing that the length of the identification exhibit is four times that of figure 1.

Int. 4. State whether or not it is possible to correctly represent by means of a mechanical enlargement a photographic view of any object, and give reasons briefly for your answer.

Ans. It is not, for the reason that the camera by means of which the photograph is taken is so much smaller than the article photographed and necessarily the object is reflected in the camera with its extreme points from the centre more or less distorted, and hence a mechanical enlargement of the photograph would mechanically

enlarge these distortions and could not by any possibility correctly represent the object photographed.

Int. 5. Compare Respondents' Exhibit Whitman Saddle with Respondents' Exhibit "Enlarged Drawing," &c., and state whether the said saddle is made in conformity with the lines of the said Exhibit Enlarged Drawing.

Ans. I have made the comparison called for in the question and find that the said Exhibit Whitman Saddle is not made in conformity with the said enlarged drawing. In the comparison I confine myself to the points marked in figure 1 of the patent *b c*. If Respondents' Exhibit Whitman Saddle was made in conformity with said enlarged drawing at the point just referred to by me, then the line of the saddle which corresponds with the line marked *b* of the said drawing
158 would be in nearly a perpendicular line when the saddle rested upon a level surface—that is, it would not be a perpendicular line, but where the line *b* met the seat line would be nearer the cantle than the front of the saddle instead of being inclined in the opposite direction, as is the case in the said Exhibit Whitman Saddle. When making this comparison I took into consideration the fact that the enlarged drawing showed the rear of the pommel at both of its sides, and in order to make a saddle in conformity with said drawing and not have one side of the rear of the pommel extend towards the cantle farther than the other that a medium line would have to be struck, and in doing this it would necessarily bring the point where the line *b* meets the seat line nearer the cantle than one portion of the line *b* is and further from the cantle than the other portion is, and in this way the line would, if anything, in the saddle incline more towards the cantle if it was made in conformity with the drawing than it now does towards the extreme front of the saddle. Another difference I find is that the point where the line *b* meets the seat line in the saddle is much sharper or more angular than if made in conformity to the said enlarged drawing. The same fact that would make the line *b* incline more towards the cantle in the saddle would also make the curve at the point where the line *b* and seat line meet larger than it is shown in the said enlarged drawing.

Int. 6. Look at Respondents' Exhibit Whitman Saddle and state whether or not said exhibit is a correct embodiment of the saddle represented in figure 1 of the photograph of the Whitman patent in suit and give reasons for your answer.

Ans. I have compared the said Exhibit Whitman Saddle with the photograph of the patent in suit and find that the said saddle is not a correct embodiment of the saddle represented in the said photograph. To aid me in making the comparison I caused the said Respondents' Exhibit Whitman Saddle to be photographed in as nearly the same positions as possible to those shown in the photographic drawing of the patent in suit. I also caused the said saddle to be photographed in a position so as to give as near a side profile view of it as I could. I then compared the photographs taken of the said exhibit saddle with those

of the patent in suit, and such comparison clearly showed that the said saddle was not a correct embodiment of the photographs of the patent in suit. At the points marked *b c* of
159 figure 1 of the patent in suit that portion of the line *b* nearest to the extreme front of the saddle runs in almost a perpendicular line, while the opposite portion of the line *b* or that portion of it farthest from the extreme portion of the saddle describes quite an incline towards the cantle as it descends to where it meets the seat line, while in the corresponding view of the said defendants' saddle the point corresponding to that nearest the extreme front of the saddle inclines quite strongly towards the extreme front of the saddle, while that portion of the line farthest from the extreme front of the saddle descends in nearly a perpendicular line. If the said saddle had been a correct embodiment of the photograph of the patent in suit these differences could not possibly have existed; also in figure 1 of the patent, where that portion of the line *b* farthest from the extreme front of the saddle meets the seat line, quite a gradual curve is shown, while at the corresponding point in the corresponding view of the said exhibit saddle an angle is shown instead of a curve. This is also the case at the point marked *c* on figure 1 of the patent, but the curve is not quite so pronounced as on the opposite side, while at the corresponding point of the corresponding view of said exhibit saddle the angle is more pronounced. I understand that figure 2 of the photographic drawing of the patent in suit represents the tree or one like it upon which the saddle shown in figure 1 is made. A comparison of figure 2 of the photographic drawing of the patent in suit with the corresponding view taken of the said exhibit saddle shows that the point marked *c* in figure 1 of the patent in suit has only a trace of it left in figure 2 of the patent, while at the corresponding point of the corresponding view of the said saddle the said point is quite noticeable, thus conclusively showing that the said exhibit saddle and the tree represented in said figure 2 of the patent in suit do not correspond in this particular.

(At the hour of 3 p. m. (now arrived) counsel for respondent requests the examiner to note that he leaves for home.)

Witness continues: The side profile view of said exhibit saddle shows the line corresponding to that one marked *b* in figure 1 of the patent as being inclined somewhat towards the extreme front of the saddle as it descends to where it meets the seat line. If said
160 saddle was a correct embodiment of the saddle represented in the photograph of the patent in suit the said line, instead of inclining towards the extreme front of the saddle as it descends, would incline towards the cantle and in an opposite direction from that which it does.

Those several views of the said exhibit saddle are mounted upon one card. The two views of the saddle corresponding to the two figures of the patent are arranged on the upper portion of the card, and the side profile view on the lower portion of the card under the

two former. I will mark the two upper views Fig. 1 and Fig. 2, and the side profile view Fig. 3.

(Counsel for complainant offers in evidence the photograph above referred to by witness, and the same is marked Complainant's Exhibit Photograph (3 figures) of Respondents' Exhibit Whitman Saddle, Aug. 20, 1887.)

Witness continues: The said exhibit saddle differs from the saddle represented by the photographic drawing of the patent in suit in that the seat line as it approaches the point marked *c* in figure 1 of the patent is lower than what it is in the saddle represented by the photograph of the patent in suit.

As a further proof that the said Respondents' Exhibit Whitman Saddle is not a correct embodiment of the saddle represented in figure 1 of the photograph of the patent in suit, I have caused photographs to be taken of several other exhibits in this case in the same positions as nearly as possible as those in which the said exhibit saddle was photographed. When taking the photographs which correspond with figure 1 of the patent in suit, the camera was not moved and the saddles were placed upon the same support in as nearly the same position as it was possible for me to place them. The same is true regarding the views taken which correspond with figure 2 of the patent in suit as well as the side profile views which I caused to be taken of the said various exhibits. The exhibits referred to are Respondents' Exhibit Whitman Saddle, Complainant's Exhibit D, and Respondents' Exhibits Strauss-Granger Tree, and Sullivan Granger Tree. The last-named exhibit I did not cause any side profile view to be taken of it. A comparison of the photographs of the three last-named exhibits at the various points referred to by me when comparing the photographs of the
161 said Exhibit Respondents' Whitman Saddle with the photographic drawing of the patent in suit, so far as the points marked *b c* on figure 1 of the patent in suit are concerned, shows that a line running in the direction in which that one does in the said Exhibit Whitman Saddle at the parts corresponding to those marked *b c* would necessarily show itself when viewed from the position shown in figure 2 of the patent, while when the said line runs in a direction towards the cantle with a curve at the point marked *c* on figure 1 of the patent it shows only a trace of it, if at all, when placed in the position shown in figure 2 of the patent in suit. The several views of each one of these three last-named exhibits are mounted upon cards in a similar way that the three views of Respondents' Exhibit Whitman Saddle were mounted. I will mark the various figures on each of the cards similarly to those of the photograph of said Exhibit Whitman Saddle.

(Counsel for complainant offers in evidence the photograph of Complainant's Exhibit D above referred to by the witness, and the same is marked Complainant's Exhibit Photograph (three figures) of Complainant's Exhibit D, Aug. 20, 1887.)

(Also the photograph of Respondents' Exhibit Strauss-Granger

Tree above referred by witness (three figures), and the same is marked Complainant's Exhibit Photograph (three figures) of Respondents' Exhibit Strauss-Granger Tree, Aug. 20, 1887.)

(Also the photograph of Respondents' Exhibit Sullivan-Granger Tree above referred to by witness, and the same is marked Complainant's Exhibit Photograph of Respondents' Exhibit Sullivan-Granger Tree (two figures), Aug. 20, 1887.)

Adjourned till Friday, the 26th inst., at 1 p. m.

FRIDAY, *August* 26, 1887.

Met pursuant to adjournment—present, R. H. Duncan, Esq., of counsel for complainant—and the examination of Mr. Newbury proceeded as follows:

Witness continues: As a still further illustrative proof of the correctness of my position that Respondents' Exhibit Whitman
162 Saddle is not a correct embodiment of the saddle represented in Fig. 1 of the photograph of the patent in suit, I procured a saddle-tree of the Whitman Saddle Company, which I slightly changed so that I thought the saddle made by covering such tree would, when placed in the positions shown in the photograph of the patent, give photographs substantially in shape and appearance like those of the photograph of the patent. I caused the said tree to be covered and took the photographs of the saddle, taking great pains to place the saddle in exactly the positions shown in Figs. 1 and 2 of the photograph of the patent in suit. I now produce the saddle and the photograph so taken and mark the figures of the photographs, Fig. 1 and Fig. 2, to correspond with the figures of the photograph of the patent. I took a third view, the same being a side profile, which I mark Fig. 3. The three figures I have mounted upon a single card.

(Counsel for complainant offers in evidence the saddle just produced by the witness, and the same is hereby marked Complainant's Exhibit Newbury-Whitman Saddle, Aug. 26, 1887.)

(Also the photographic views of said saddle, and the same is marked Complainant's Exhibit Photograph (three views) of Newbury-Whitman Saddle, Aug. 26, 1887.)

Int. 6½. If you had been accustomed to use or handle saddles like Complainant's Exhibit Newbury-Whitman Saddle and should see saddles exposed for sale in a store or shop like Respondents' Exhibit Whitman Saddle state whether or not you would readily distinguish any differences in the shape of the saddles.

(Objected to as incompetent.)

Ans. I would undoubtedly notice a difference between the two classes of saddles.

Int. 7. What difference would you notice?

(Same objection.)

Ans. I would notice that the fall at the rear of the pommel of the

saddles like Respondents' Exhibit Whitman Saddle differed from the corresponding point in the saddles like Complainant's Exhibit Newbury-Whitman saddle. That portion of the line which forms the cut-down at that point before it meets the seat line runs in a different direction in the two classes of saddles—that is, in that class like Respondents' Exhibit Whitman Saddle the line as it de-
163 scends inclines towards the extreme front of the saddle, while the corresponding line in that class of saddles like Complainant's Exhibit Newbury-Whitman Saddle inclines as it descends in the opposite direction. There is also a difference where the line just referred to meets the seat line in the two classes of saddles. In that class like Respondents' Exhibit Whitman Saddle there is an angle at that point, while in that class of saddles like Complainant's Exhibit Newbury-Whitman Saddle at the corresponding point there is a curve.

Int. 8. State whether or not Complainant's Exhibit Newbury-Whitman Saddle properly embodies the design of the patent in suit.

(Same objection.)

Ans. It does.

Int. 9. Comparing Complainant's Exhibit Newbury-Whitman Saddle with Respondents' Exhibit Whitman Saddle, state whether or not you consider respondents' exhibit to be a Whitman saddle under the patent in suit.

(Same objection.)

Ans. I should consider it to be such a saddle, but mutilated at the point just back of the pommel. In all other respects the said saddle appears to correspond with the saddle represented by the photograph of the patent in suit and with Complainant's Exhibit Newbury-Whitman Saddle; but, in my opinion, if the eye of a person who was familiar with the genuine Whitman saddle should look upon the cut-down at the back of the pommel of Respondents' Exhibit Whitman Saddle it would at once appear to such person that the design of the Whitman patent had been departed from at that point.

Int. 10. State whether you have examined Respondents' Exhibit Kilgour Tree and Respondent's Exhibit Slotted Kilgour Saddle; and, if so, state whether or not the Exhibit Slotted Kilgour Saddle contains a Kilgour tree like the Exhibit Kilgour Tree and conforms to the shape of such tree.

(Same objection.)

Ans. If Respondents' Exhibit Slotted Kilgour Saddle contains a tree like Respondents' Exhibit Kilgour Tree, then the covering of said saddle does not conform in outline or shape to the tree. There is a very noticeable change at two points at the front end of the saddle from the corresponding points of the tree; on the other hand, if the
164 covering of the saddle conforms to the shape of the tree within it, then the tree of such saddle is different from Respondents' Exhibit Kilgour Tree. There is also a difference between

Respondents' Exhibit Slotted Kilgour Saddle and Respondents' Exhibit Kilgour Tree at the point where the line of the cantle meets the seat line, and if the covering of the saddle at this point closely follows the outline of the tree, then the tree of such saddle differs from Respondents' Exhibit Kilgour Tree; but, on the other hand, if the tree of said saddle is like Respondents' Exhibit Kilgour Tree, then the covering of the saddle does not conform to the shape of the tree.

Int. 11. Question repeated, substituting for Respondents' Exhibit Kilgour Tree and Respondents' Exhibit Slotted Kilgour Saddle Respondents' Exhibit Muley Tree and Respondents' Exhibit Slotted Muley Saddle.

(Same objection.)

Ans. A comparison between Respondents' Exhibit Slotted Muley Saddle and Respondents' Exhibit Muley Tree shows a difference in the shape of the top of the pommel, as well as a difference in the shape of the front of the pommel. If the covering of said slotted Muley saddle conforms closely to the shape of the tree of that saddle, then the tree of such saddle differs from Respondents' Exhibit Muley Tree in the respects just named, but if the tree of such saddle is like Respondents' Exhibit Muley Tree, then the covering of such saddle does not conform closely to the shape of the tree. There is also a difference where the seat line meets the line of the cantle in the two exhibits just referred to, and if the covering of the said saddle closely follows the shape of the tree within it, then such tree differs from Respondents' Exhibit Muley Tree; but if, on the other hand, the tree of the saddle and Respondents' Exhibit Muley Tree are alike at this point, then the covering of the said saddle does not closely follow the shape of the tree within it.

Int. 12. Last question repeated, with the substitution for Respondents' Exhibits Muley Tree and Slotted Muley Saddle of Respondents' Exhibit Sullivan Black Granger Tree and Respondents' Exhibit Slotted Granger Saddle.

(Same objection.)

Ans. A comparison of the two last exhibits mentioned in the question shows that the covering of Respondents' Exhibit
165 Slotted Granger Saddle does not closely follow the shape of the tree at the cut-down at the rear of the pommel. Pressure by the hand upon that portion of the saddle discloses that the covering is not supported by the tree. A comparison between the two last-named exhibits at the point of the pommel shows that the covering of Respondents' Exhibit Slotted Granger Saddle does not closely follow the shape of the tree within it, as the covering yields at the front of the pommel near its lower side when pressure is put upon it. This would not be the case if the covering closely followed the shape of the tree. A comparison between Respondents' Exhibit Slotted Granger Saddle and Respondents' Exhibit Sullivan Black Granger Tree at the top of the pommel of each shows that the saddle is much longer at this point than what the tree is. If the covering of the

said saddle closely followed the shape of the tree, then the tree of such saddle differs from Respondents' Exhibit Sullivan Black Granger Tree; but if, on the other hand, the tree of said saddle is the Respondents' Exhibit Sullivan Black Granger Tree, then the covering does not closely follow the tree within the saddle.

Int. 13. Respondents' witness, Wm. Hill, in answer to question 23 and question 24, has testified that a tree the same as Respondents' Exhibit Sullivan Black Granger Tree, with a Jenifer cantle added thereto, was the kind of tree covered in Respondents' Exhibit Slotted Granger Saddle, with Jenifer cantle. Please examine the exhibits named in the question and state whether this testimony of Mr. Hill is correct.

(Same objection.)

Ans. I have examined the two exhibits enquired about and find that it is manifestly not correct. The Respondents' Exhibit Sullivan Black Granger Tree shows a pommel of a different height and a different shape from that of the pommel of the saddle—that is, the height of the pommel of the tree is greater by about three-fourths of an inch. Therefore it would be impossible to put a tree with such a pommel into the saddle. A comparison of the front of the pommel of the two exhibits shows at once that the tree of the saddle is manifestly a different tree both in height and shape from Respondents' Exhibit Sullivan Black Granger Tree.

Int. 14. If respondents' witness, Charles L. Burdett, in answer to questions 4, 5, and 6 of his direct examination, means to state
166 or imply that the cantle of the saddle shown in Respondents' Exhibit Jenifer Patent is the same in shape and appearance as the cantle of Respondents' Exhibit Whitman Saddle will you state whether or not his testimony in this respect is correct?

(Objected to as incompetent and immaterial.)

Ans. As I read the drawing of the said Jenifer patent, the cantle of the said drawing is not the same as the cantle upon Respondents' Exhibit Whitman Saddle, and therefore I do not think that Mr. Burdett's testimony is correct if he intended to state as mentioned in the question. The cantle in said drawing appears to be not so long as the cantle of Respondents' Exhibit Whitman Saddle, and it also appears to rise more abruptly or in a steeper line than does the cantle of the said Whitman saddle.

Int. 15. Respondents' witness, Wm. Hill, testified, in answer to the 20th question of his direct examination, that the central slots in saddles serve no useful purpose. What is your understanding on this subject?

(Objected to as incompetent.)

Ans. If he meant central slots like that of Respondents' Exhibit Whitman Saddle, which I suppose he must have meant, then my understanding is that such slots do serve a useful purpose. It must be manifest to the most casual observer that an open slot like that of the said Whitman saddle allows a circulation of air through it

and thus renders the seat of the rider much cooler than it otherwise would be, as well as keeping the back of the animal cooler. I am informed that where persons are suffering with piles or other diseases of the rectum that saddles with such central open slots are the only ones that they can use with any degree of safety or comfort.

Int. 16. If you had used and become familiar with the saddle the same as Complainant's Exhibit Newbury-Whitman Saddle and should see exposed for sale in a store or shop saddles the same as Complainant's Exhibit A or Complainant's Exhibit C, would you or would you not (straps, flaps, and jockeys on the saddles to be left out of consideration) consider such saddles as Complainant's Exhibit A or C to be the same as the saddle that you had used and become familiar with?

(Objected to as incompetent.)

Ans. I would.

167 Int. 17. State why.

(Same objection.)

Ans. Because they would produce on my mind the same effect and give to my eye the same appearance that is produced and given by the said Newbury-Whitman saddle.

Int. 18. Respondents' witnesses, Charles L. Burdett, Thomas W. Gleason, and Henry R. Williams, have been asked substantially the following question, viz., if you had owned and ridden for three months, more or less, a saddle like that shown in figure 1 of the photograph of the Whitman patent and your saddle had become lost or stolen and you should go to a saddler's for the purpose of buying a new saddle like your old one, would you or not take or mistake such a saddle as Complainant's Exhibit A, Complainant's — C, or Respondents' Exhibit Park Saddle to be the same as your old saddle, and they answered the said question in the negative, with, in some cases, some qualifications or doubts; and they gave reasons for their answers, one of the said witnesses giving as his reason the angular profile of the opening in the saddle as viewed from the side, meaning, as I understand, the angular appearance seen in figure 1 back of the pommel in the photograph of the Whitman patent, as shown at the point *c* on said figure. How do you account for the variance of opinion of these witnesses with your own ideas as previously expressed on this point?

(Objected to as incompetent and immaterial.)

Ans. The only way that I can account for it is that they have misapprehended the correct form of the saddle which is represented by the photograph, especially in the part back of the pommel to which they have all referred. It will be noted that figure 1 of the patent shows the saddle in partial perspective, and this necessarily changes the lines of the photograph at this point from what they are in the saddle—that is, the line nearest the camera is made more angular and that farthest from it more curved than what they are in the saddle itself. This fact does not seem to have been considered

by the said witnesses, for, if it had been, I do not see how they could have been led into their misapprehension of the form of the saddle represented in the photograph of the patent in suit. The witness, Gleason, speaks of the angular profile of the opening, and I suppose he refers to the apparent angle at the point *c* in figure 1 of
168 the photograph of the patent in suit, which apparent angle is due to the fact above stated and would not appear in the saddle itself.

If the said witnesses had placed the said exhibit saddles so that their eye would have occupied the same position in relation to the saddles that the camera occupied relative to the saddle when the photograph of the patent in suit was taken they would have discovered that said exhibit saddles had more or less of the angular appearance at the point corresponding to that marked *c* in figure 1 of the patent in the suit—that is, at that portion of the cut-down at the rear of the pummel where it meets the seat line nearest the eye. This I have found to be a fact by so placing the said exhibit saddles in relation to my own eye, and in corroboration of said fact I have caused the said exhibit saddles to be photographed in as nearly the same positions as are shown in figures 1 and 2 of the photograph of the patent in suit. I have also caused the said exhibit saddles to be photographed so as to show them in side profile as nearly as possible by means of the camera. I have marked the two views of the photographs of said exhibit saddles which correspond with the two views of the photograph of the patent in suit with corresponding letters and figures, viz., Fig. 1 and Fig. 2. I have also marked the side profile view of the said exhibit saddles with the letters and figure Fig. 3. The three views of each of the said exhibit saddles I have mounted upon three separate cards, so that each card contains three views of one and the same saddle.

Counsel for complainant offers in evidence the photographs of the three saddles referred to by witness, and the same are hereby marked respectively as follows: Photograph of Complainant's Exhibit A, Photograph of Complainant's Exhibit C, and Photograph of Respondents' Exhibit Park Saddles.

Adjourned for cross-examination.

The foregoing objections entered to testimony taken in the absence of Mr. Simonds were made subsequently by consent of counsel to have the same effect as if made at the time of taking the testimony.

No cross-examination.

HENRY F. NEWBURY.

Complainant's rebutting testimony closed.

169 NEW YORK, *December* 10, 1887.

Testimony taken in behalf of complainants in reply to testimony taken by defendants after complainants closed their rebuttal proofs, in accordance with notice duly served on defendant's solicitor.

Attended at office of complainant's solicitor.

Present: R. H. Duncan, Esq., for complainants, no one appearing for defendants.

WILLIAM C. C. MEHLBACH, being recalled on behalf of complainants, testifies as follows:

Int. 1. Have you been previously sworn and have you testified in this case?

Ans. Yes; during last August.

Int. 2. State whether or not you have read a copy of depositions of John S. Sullivan, Louis Wagner, James M. Hayes, Frederick Schafer, and Michael K. McGrath, entitled in this case and purported to have been taken on the 26th of October, 1877, on behalf of defendants herein.

Ans. I have.

Int. 3. Where did you get such copy of testimony?

Ans. Mr. H. L. Buck, president of the complainant company herein, handed it to me and told me that Mr. Simonds, defendant's counsel, handed it to him at Hartford, Conn., for us to take a copy from.

Int. 4. Please state whether or not Mr. John S. Sullivan in his said deposition gives a correct statement of what was said and done at the interviews which he states you had with him in the penitentiary at Jefferson City, Mo., in the spring of 1886; and, if not, please point out in what particulars said Sullivan's statement is incorrect or untrue.

Ans. Mr. Sullivan says in his testimony that I introduced myself as partner of H. H. Heiser, of Denver, Colorado. This did not do. I used my own name and may have said I had come from Denver, Colorado. This was true. If I had represented myself as being connected with any concern in Denver it would have been the Denver Manufacturing Co., as I had just arranged with them to represent the Whitman Saddle Co. in that part of the West
170 and know intimately the president and the members of the company. He further says in his testimony, as I understand, that when going into his factory there was on the bench a No. 1 tree only, and that with a round cantle, and that at my suggestion he called for a similar tree with a fantail. Thereupon he designates these two trees in the catalogue in which he gave me the quotations for the two trees shown to me as Park Whitman No. 1, $24, and No. 6, $22, it being understood that the increase is on account of the fantail. Later on in his testimony he also calls the fantail tree No. 1, thus showing that his first statement that the tree with round cantles was No. 1 is untrue, as he flatly contradicts himself in his own testimony. The facts are that when he was showing me the

different styles of trees he was making as we were going through his factory, two trees like the No. 1 and the No. 6 Whitman trees were lying together, and on reflection regarding this particular part of the interview I recollect asking him if these were not the so-called Whitney, or something like that, trees. I misnamed the trees purposely with a view to drawing him out. He then took them up and named them, calling the one with a tail the No. 1 Whitman tree and the other the No. 6 Whitman tree. He said, "It is Whitman, you mean, not Whitney." Everything Mr. Sullivan states that he said during that interview as to that these trees shown me "looked something like the Whitman tree, but were really a superior tree to the Whitman tree," is all a perfect blank to me, and I have no recollection whatever of his having made such remarks. He was so frank and open in calling these trees Whitman trees that I concluded to have his statements reiterated in the presence of a competent witness, and for this reason I asked Mr. Louis Wagner (before whom I had in the meantime already laid our case and asked him to take care of our interests at Jefferson City) to accompany me on my second call at Sullivan's factory, which he did. When Mr. Wagner and I arrived at the place in the factory where these two trees were lying, accompanied by Mr. Sullivan, I put my question to Mr. Sullivan in such a manner with a view to cause him to reiterate what he said before. My bringing Mr. Wagner with me had evidently opened his eyes, for at this point he appeared surprised and suddenly changed his whole deportment towards me and said that he was calling these trees Park trees and not Whitman trees. Mr. Sullivan says I asked him to write down the word "Whitman" in quoting the trees to me in his catalogue; also
171 that we would more readily know what tree was meant by "Whitman" than by the name "Park," as we had used a few of the Whitman trees. This is not true. I did not ask him to write the word Whitman in the catalogue; he did it voluntarily and without any request from me. I did not tell him that we would more readily know what tree was meant by "Whitman" than by "Park" or use any words to that effect. During our conversation both Mr. Sullivan and myself were using the name "Whitman" to designate the two trees which Mr. Sullivan had showed me and to which I have referred above, and both of us used that name several times in the course of that conversation.

Int. 5. How sure are you that when you were passing through the factory with Mr. Sullivan, as you say, you saw the two trees lying side by side on the bench when you first saw them, and that Mr. Sullivan called these two trees the Whitman No. 1 and the Whitman No. 6, and that he did not send and get a fantail No. 1 tree?

Ans. I am absolutely certain that there were two trees, the No. 1 and the No. 6, lying on the bench when I first saw them. I also know positively that he called them Whitman No. 1 and Whitman No. 6, as I have stated, and that he did not send for a No. 1 fantail. He did send, as we were going through the factory, for several trees, which was at my request to see certain trees which did not seem to

be at hand near us, but none of these were Whitman trees or like the Whitman trees.

Int. 6. If there are any incorrect statements in the deposition of Michael K. McGrath, so far as they relate to interviews with you, the substance of which McGrath has set forth in his said deposition, you will please point them out and state what the truth is.

Ans. I was at that time president of the New York Sportsman, a newspaper corporation; not vice-president as he says, and was not introduced to him as such; but I did incidently so state in the course of the conversation, after I had told him that I was connected with the Whitman Saddle Co. When I named the name of the saddle company he then said he had a Whitman saddle, and when I took out my catalogue he pointed out to me what he had got, and he told me that the tree was a present from Mr. Sullivan, and after further conversation about other things I again referred to the saddle matter and showed some curiosity in regard to his saddle and intimated that I would like to see it, whereupon he invited me to accompany him to his barn to look at it, and this we did.

172 Mr. McGrath states that he had no saddle, but that it was a tree only. He also states that the tree had a round cantle, and did not have a peaked cantle. I do not wish to positively contradict this statement of Mr. McGrath's, as he ought to know the condition in which the saddle-tree was at that time better than I, but it is certainly very strongly impressed upon my memory that the saddle-tree which he showed me in his barn on that occasion was equipped for a saddle, and that it did have a peaked and not a round cantle upon it, and I am only led to believe that I could have been mistaken in these respects by these very positive statements of Mr. McGrath.

WM. C. C. MEHLBACH.

HENRY L. BUCK recalled:

Int. 1. Please look at Respondents' Exhibit "Tracing from Patent in Suit" and state whether said exhibit is a correct tracing of the outlines of Respondents' Identification Exhibit No. 1; and you may also bear in mind that defendant's witness Harry R. Williams states that when he made the said tracing he had before him Respondents' Exhibit Duplicate of Whitman Patent Photograph as well as Respondents' Identification Exhibit No. 1.

Ans. I find that the tracing from patent in suit does not show the correct outlines of the saddle Fig. No. 1 of Respondents' Identification Exhibit No. 1. My attention is first called to the fact that the witness Williams, in making the tracing, has not confined himself to corresponding sets of lines. By this I mean that in figure 1 the saddle is bounded at all parts by one or more of three lines, viz: First, nearest to the saddle, and caused by the curving of the leather over the edge of the wood underneath, a dark line, which in figure 1 is shown prominently along the front of the saddle, known as the pommel; second, by a line of sewing which extends all around the saddle, but which is only clearly visible in places. It is very prominent near the stirrup bar; third, by the line of the edge of the

formed and finished leather, which, whether shown or not, must be beyond the wooden shape of the tree and the sewing in order to hold the sewing. I have found in years of experience that all of these three lines will vary when made by different workmen, and also when made by the same workmen.

I also find these lines relatively much more prominent in
173 the photographs than they are in the respective saddles themselves, and this part of my answer would apply with equal force to any other photograph of saddles similarly finished. In comparing the tracing and exhibit in question I guide myself by the third or outer line, as the witness Williams has done in the case of the front and bottom of the saddle. The main differences which I have noticed are in the fall-back of the pommel in figure 1 and in the seat lines continuing those of the fall towards the cantle. The photograph does not show the same angle at the junction of the lines of fall and seat at the point marked C on the photograph, which the tracing does show, and the tracing is therein clearly and manifestly incorrect. I also find that the line of the fall in the photograph on the side away from me, which is the "near" side of the saddle, shows a continuous line branching away from the corresponding line on the "off" side, which is the side nearest to me in the picture, while the tracing shows the lower part of said "near" side line parallel to that of the "off" side, and the tracing is therein manifestly incorrect. Comparing the lines of the seat, which are the lines running rearward from the point C, I find that in the photograph they do not run parallel, but converge until they reach a point considerably rear of the center of the seat, while in the tracing they run converging very slightly to a point about three-quarters of an inch rearward of a point corresponding to C in the photograph; thence, diverging very slightly, continue about parallel to a point beyond the center of the seat. These seat lines are manifestly different in the tracing and in the photograph, and therein the tracing is incorrect. In measurements I find that at a point on the rear side on the photograph at a point where the line of fall and seat seemed to have been considered to join by the existence of a slight indent or knife mark, the measurement horizontally across to the line of the "off" side is $\frac{14}{100}$ of an inch, while in the tracing it is only $\frac{11}{100}$ of an inch. Now, at a point three-eighths of an inch back of the point C on the photograph I find the measurement from the off-side line to the near-side line to be $\frac{11}{100}$ of an inch, and in the tracing the same measurement to be less than $\frac{7}{100}$ of an inch. At the center of the seat the measurement on the photograph is about $\frac{3}{100}$ of an inch in a straight line between the two seat lines, and on the tracing the similar measurement is $\frac{7}{100}$ of an inch, fully double that of the photograph. The finished leather edge of the
174 "near" side of the seat in the photograph apparently curves from an upright position at a point opposite C gradually to a flat position or to that of a right angle with the vertical axis of the tree at about the center of the seat. The witness Williams follows this line on the "off" side, but seems to pay no attention to it on the "near" side. In front, at the lines of the fall, he joins his

imaginary line of the "near" side of the seat to one equally imaginary line bounding the fall, which is nearer the dark shading caused by the obscurity inside of the pommel instead of by the line of finished leather, which is beyond it, and is the corresponding line by which he is governed on the "off" side. What the lines may have been on the photograph known as Respondents' Exhibit Whitman Patent Photograph I do not know, not having said exhibit before me, but I am fully aware and do know that two photographic proofs from the same negative are not necessarily alike in their lines of outline. Two consecutive proofs may vary as much as do the lines of the tracing and photograph before me by reason of the stretching or expanding of the paper during the processes while under the photographer's hands.

Int. 2. Look at Respondents' Exhibit Tracing from Photo. of Newbury-Whitman Saddle, and state whether the same is a correct and accurate tracing of figure 1 of Complainant's Exhibit Photograph of Newbury-Whitman Saddle, as testified to by defendants' witness Harry R. Williams in answer to question 3 of his deposition.

Ans. In my examination of the tracing and photograph named in the question, I again govern myself in determining the outline of the photograph by the line which I have designated as third, that of the finished leather, outside of and beyond the sewing, and in comparing this tracing and photograph I limit myself mainly, the same as I did in the previous question and answer, to the lines of the fall-back of the cantle and those of the seat. In this tracing, as well as in the one named in the previous answer, the witness Williams has not confined himself to any one set of lines, but in this case, on the "near" side of the saddle at the seat, makes use of a line in the body of the saddle and which may be the line I have designated in the previous answer as No. one. It is not the line which he makes use of on the off side of the seat which is that of the "third" and which in the photograph on the near side is the one plainly visible as the nearest to me by following said line from the centre of the seat
175 upward to the pommel. Such lines of the seat, therefore, diverge more in the photograph from the centre of the seat toward the pommel than they do in the tracing, and near the pommel, at the fall, the lines in the tracing are wider than those in the photograph, and the witness Williams' answer that it is a correct and accurate tracing is wrong. The lines of the "off" side of the fall and seat where they join on the tracing show a sharply defined angle, which does not exist, to my eye, in the photograph. The lines bounding the fall at the back of the pommel on the tracing do not diverge by a large percentage as much as do the corresponding lines on the photograph. I find by measurement that from a point where the seat and fall lines join on the near side to a point in a line parallel with the line of the bottom of the photograph in the line of the off side of the fall the distance is fully $\frac{10}{100}$ of an inch, and a corresponding measurement on the tracing shows only $\frac{6}{100}$ of an inch. In these particulars the tracing is manifestly incorrect. The measurements of the distance between the two seat lines at the

centre of the seat are fully as different as similar measurements of tracing and photograph in previous answer.

Int. 3. If the two tracings which you have referred to in your last two answers were so changed in the particulars which you have pointed out in said answers as to make them correct and accurate tracings of the originals from which they were taken, how would those two tracings compare one with the other in their appearance—that is, as presented to the eye?

Ans. There would, in my opinion, then, be no difference between the two so great as to distinguish the one from the other, and I am sure that if saddles were made on the lines then existing that no rider, purchaser, or dealer would make a distinction between the two or consider them in any respect different from each other without his attention was called to some minute point of difference.

HENRY L. BUCK.

176 UNITED STATES OF AMERICA, } ss:
City, County, and State of New York, }

I, William T. Farnham, notary public and special examiner by consent herein, do hereby certify that on the 26th day of May and on the 20th and 26th days of August, all in the year 1887, before me came Henry F. Newbury, and that on said 26th day of May and on the 10th day of December, in the same year, before me came Henry L. Buck, and on the 16th and 17th days of August of the same year appeared before me Jonathan D. Freeman, and also on the said 16th day of August before me came Henry M. Van Ness, and on said 17th day of August and also on the 18th day of said August before me came Laurence Cunningham, and on the said 18th day of August also appeared before me *came* Crist Rademacher and Peter J. Vogel, and on the 19th day of said August also appeared said Peter J. Vogel, and on the same day and also on the 10th day of December, 1887, appeared before me William C. C. Mehlbach, and, each of said witnesses having been by me first duly sworn, they gave their depositions, which were reduced to writing by me, and each of said witnesses signed his several depositions in my presence. I further certify that I am not attorney or of counsel to either of the parties hereto or interested, directly or indirectly, in the result of said action.

I further certify that at the taking of said testimony Robert H. Duncan, Esq., appeared as counsel for complainants and William E. Simonds, Esq., appeared as counsel for defendants (the latter being absent on the 26th of August and 10th day of December, as appears by said record).

In witness whereof I have hereunto set my hand and affixed my notarial seal this 4th day of January, 1888.

WILLIAM T. FARNHAM,

[L. S.] *Notary Public and Special Examiner by Consent Herein.*

And on the 6th day of June, 1888, the following amendments to respondents' answer were filed in the words and figures following, viz:

177 United States Circuit Court, District of Connecticut. In Equity.

THE WHITMAN SADDLE COMPANY
vs.
SMITH, BOURN & COMPANY.

Amendment to Answer.

Respondents' answer is hereby amended by inserting immediately after the mention of the name of Mr. Morrison the following:

"W. H. Jenifer, of Baltimore, in the State of Maryland, at said Baltimore."

Also by inserting immediately after the mention of the patent of Gatheight and Watson the following:

"(11.) United States patent to W. H. Jenifer, No. 28867, granted and dated June 26, 1860."

This amendment dated April 25, 1887.

WM. EDGAR SIMONDS,
Respondents' Solicitor.

Agreed to.
DUNCAN, CURTIS & PAGE.

United States Circuit Court, District of Connecticut. In Equity.

THE WHITMAN SADDLE COMPANY
vs.
SMITH, BOURN & COMPANY.

Amendment to Answer.

Respondents' answer is hereby amended by inserting immediately after the mention of the patent of Gatheight and Watson the following:

178 "(11.) United States patent to Walter H. Jenifer, No. 28867, granted and dated June 26, 1860."

This amendment dated April 25, 1887.

WM. EDGAR SIMONDS,
Respondents' Solicitor.

Agreed to.
DUNCAN, CURTIS & PAGE,
Sol'rs for Compl't.

United States Circuit Court, District of Connecticut. In Equity.

THE WHITMAN SADDLE COMPANY
vs.
SMITH, BOURN & COMPANY.

Amendment of *Answer.*

Respondents' answer in this cause is hereby amended by inserting *as* just before the closing matter, beginning "and these respondents deny," &c., the following:

XI. These respondents, further answering, upon information and belief aver that said design letters patent No. 10844 are null and void because that the design described and claimed therein and all the material and substantial parts thereof were in public use and on sale in this country for more than two years prior to the date at which application was made for said design patent last mentioned, and said public use and sale was had by and was known to the same persons who in paragraph or section "VII" of this an-
179 swer are stated as having knowledge of said design prior to the alleged invention thereof by Royal E. Whitman, and the years of such public use and sale are as stated in said paragraph or section "VII," and the residences of said "persons" last mentioned are as stated in said paragraph or section VII.

Dated June 8, '87.

WM. EDGAR SIMONDS,
Respondents' Sol'r.

Amendment agreed to.
DUNCAN, CURTIS & PAGE.
Solicitors for Compl't.

And on the same day examiner's return of evidence offered by respondents was filed in the words and figures following, viz:

180 United States Circuit Court, District of Connecticut. In Equity.

THE WHITMAN SADDLE COMPANY
v.
SMITH, BOURN & COMPANY.

Testimony taken on the part of the respondents in the above-entitled case before Henry E. Taintor, an examiner of said court, at his office, in the city of Hartford and State of Connecticut, on the 11th day of October, 1887, by consent of counsel for the different parties.

Respondents' counsel offers in evidence a certified duplicate of the model pertaining to the application on which issued the patent to Walter H. Jenifer for improvement in saddle, number 28867, dated June 26, 1860, and said model is marked "Respondents' Exhibit Jenifer Patent Model."

HENRY E. TAINTOR, *Examiner.*

And on the same day respondents' motion to strike out evidence taken on behalf of complainants was filed in the words and figures following, viz:

181 United States Circuit Court, District of Connecticut. In Equity.

THE WHITMAN SADDLE COMPANY
v.
SMITH, BOURN & COMPANY.

Messrs. Duncan, Curtis & Page, complainant's solicitors, 120 Broadway, New York city.

GENTLEMEN: Take notice that at the hearing of this cause on its merits and before that hearing the annexed motion, which before that time will be filed in court, will be brought to the attention of the court and such hearing had thereof as the court may determine.

Dated May 18, 1888.

Respectfully, W. E. SIMONDS, *Def'ts' Sol'r.*

(Registry return receipt.)

United States Circuit Court, District of Connecticut. In Equity.

THE WHITMAN SADDLE COMPANY
v.
SMITH, BOURN & COMPANY.

Respondents' Motion to Strike Out Pretended Evidence.

Now comes said respondents, by their counsel, and move the court to strike out, to refuse to consider, and to expunge from the record pretended evidence taken on complainant's behalf and
182 referred to in the printed record of complainant's pleadings and proofs as follows, to wit:

Henry F. Newbury's Testimony, Prima Facie Case.

Int. 4 objected to as incompetent and immaterial because Henry F. Newbury qualified as an expert and testified as such.

Int. 5. Same objection as to Int. 4; further, that the same is immaterial.

Int. 6. Same objection as to Int. 4.

Int. 8. Same objection as to Int. 4.

R. D. Int. 21 and answer. Same objection as to Int. 4.

Henry L. Buck's Testimony, Prima Facie Case.

Int. 7 objected to as hearsay.

Int. 19 objected to as incompetent and immaterial.

Int. 20 objected to as incompetent and immaterial.

Int. 21 objected to as incompetent and immaterial.

Int. 22 objected to as incompetent and immaterial.

Int. 23 objected to as incompetent and immaterial.

Int. 24 objected to as incompetent and immaterial.

Int. 25 objected to as incompetent and immaterial.

Int. 26 objected to as incompetent and immaterial.
Int. 27 objected to as incompetent and immaterial.
(The objections made to Int. 27 of course apply to the exhibit offered under it, to wit, "Complainant's Exhibit Printed Testimonials" Received by the Whitman Saddle Company.)
Int. 28 objected to as incompetent and immaterial.
Int. 29 objected to as incompetent and immaterial.
Int. 30 objected to as incompetent and immaterial.
Int. 31 objected to as incompetent and immaterial.
Int. 32 objected to as incompetent and immaterial.
183 Int. 33 objected to as incompetent and immaterial.
Int. 34 objected to as incompetent and immaterial.
Int. 35 objected to as incompetent and immaterial.
See following stipulation under Int. 35 and answer.
("By consent of complainant's counsel as to the time of making these objections respondents' counsel objects to all the foregoing testimony pertaining to opinions and testimonials as incompetent and immaterial.")
Int. 40 objected to as immaterial.
This testimony attempts to support the design patent in suit on the ground of the utility which it possesses.
Int. 44 and answer objected to as immaterial and incompetent.
Int. 45, with the offer, objected to as immaterial and incompetent.
Int. 46 objected to as immaterial.
Int. 47 objected to as immaterial.
Int. 50 objected to as immaterial.
Int. 51 objected to as immaterial.
Int. 52 objected to as incompetent for the reason that Buck is an expert.

Jonathan D. Freeman's Testimony in Rebuttal.

Int. 14, all after "1878" in answer, objected to as irrelevant, immaterial, and incompetent.
Int. 15 objected to as immaterial and incompetent. Mr. Freeman is of course an expert, and his notions about the matter are not to be received.
Int. 16 objected to as leading, immaterial, and incompetent.
Int. 18 objected to as immaterial, irrelevant, and incompetent.
Int. 19 objected to as immaterial.
Int. 20 objected to as immaterial, irrelevant, and incompetent.
Int. 21 objected to as immaterial and incompetent.
184 Int. 22 objected to as irrelevant and immaterial.
Int. 23 objected to as irrelevant and immaterial.
Int. 24 objected to as immaterial, irrelevant, and inadmissible for the first time in rebuttal evidence.
Int. 25 objected to as immaterial, irrelevant, and inadmissible for the first time in rebuttal evidence.
Int. 26 objected to as immaterial, irrelevant, and inadmissible for the first time in rebuttal evidence.

Int. 27 objected to as irrelevant and inadmissible for the first time in rebuttal evidence.

Int. 36 objected to as leading.

Int. 42 objected to as irrelevant, immaterial, and incompetent.

Int. 43 objected to as immaterial and irrelevant.

Int. 44 objected to as immaterial, irrelevant.

Int. 45 objected to as immaterial and irrelevant.

R. D. Int. 190. This was "objected to as incompetent," but see the following after the answer to R. D. Int. 191: "At this point respondents' counsel said that he withdrew his objection to question 190." R. D. Int. 190 therefore stands unobjected to.

Henry M. Van Ness's Testimony in Rebuttal.

Int. 13 objected to as immaterial and irrelevant.

Int. 14 objected to as immaterial, irrelevant, and leading.

Int. 25 objected to as immaterial.

Int. 28 objected to as immaterial, leading, and argumentative.

Int. 31 objected to as immaterial.

Int. 34 objected to as incompetent.

Int. 36 objected to as leading.

Int. 37 objected to as incompetent and immaterial.

Laurence Cunningham's Testimony in Rebuttal.

Int. 24 objected to as incompetent. See objection after Int. 27.

185 Int. 25 objected to as incompetent. See objection after Int. 27.

Int. 26 objected to as incompetent. See objection after Int. 27.

Int. 27 objected to as incompetent.

Int. 28 objected to as incompetent.

R. D. Int. 146 objected to as leading; and, further, that the witness had the fullest opportunity on cross-examination to explain himself in this regard.

R. D. Int. 147 objected to as leading; and, further, that the witness had the fullest opportunity on cross-examination to explain himself in this regard.

Crist. Radamacher's Testimany in Rebuttal.

Int. 19 objected to as incompetent.

Int. 20 objected to as incompetent.

Int. 26 objected to as immaterial and incompetent.

Int. 27 objected to as immaterial and irrelevant.

Int. 41 objected to as leading.

Int. 45 objected to as leading.

R. D. Int. 94 objected to as immaterial.

Peter J. Vogel's Testimony in Rebuttal.

R. D. Int. 51 objected to as immaterial.

R. D. Int. 52 objected to as immaterial.

William C. C. Mehlbach's Testimony in Rebuttal.

Int. 3, Int. 4, Int. 5, Int. 6, Int. 7, Int. 8, Int. 9, Int. 10, Int. 11, Int. 12, Int. 13, Int. 14, Int. 15. All these questions are an attack of Mehlback on J. S. Sullivan, of Jefferson City, Missouri, for which no foundation whatever was laid in the previous direct and cross-examination of J. S. Sullivan, and for that reason they are objected to.

Furthermore, so much of the answer to Int. 6 as undertakes
186 to detail the sayings of the secretary of state of Missouri is objected to as incompetent.

Int. 18 objected to as not in rebuttal evidence. If any other person besides Benjamin A. Bourn is meant, also in that case objected to as incompetent, and if otherwise that no basis for the question was laid in the examination of Benjamin A. Bourn.

Int. 19. Same objection as to Int. 18.

Int. 22 objected to as leading and argumentative. Henry F. Newbury's testimony in rebuttal.

Int. 6½ objected to as incompetent. This is an attempt to use expert evidence where it is incompetent.

Int. 7. Same objection as to Int. 6½.
Int. 8. Same objection as to Int. 6½.
Int. 9. Same objection as to Int. 6½.
Int. 14. Same objection as to Int. 6½.
Int. 15 objected to as incompetent.
Int. 16. Same objection as to Int. 6½.
Int. 17. Same objection as to Int. 6½.
Int. 18. Same objection as to Int. 6½.

William C. C. Mehlbach's Testimony in Surrebuttal.

(The whole of it.)

Testimony of Henry L. Buck in Surrebuttal.

This testimony, the whole of it, is objected to on the ground that at this time complainant had no right to take any further testimony. The notice of such objection is or will be put on file with the court. Same was duly served.

WM. EDGAR SIMONDS,
Def'ts' Counsel.

187 DISTRICT OF CONNECTICUT, STATE OF CONNECTICUT, } ss.:
County of Hartford, }

At Hartford, in said district, State, and county, May 18, 1888, I mailed a true and attested copy of the within and foregoing to Duncan, Curtis & Page, 120 Broadway, New York city, by registered letter, as per postmaster's receipt annexed, and a few days afterward received the receipt of Duncan, Curtis & Page therefor, hereto annexed.

Attest: GEORGE G. HADDOW.

Sworn to before me by said George G. Haddow, at Hartford aforesaid, this 6th day of June, 1888.

ARTHUR B. JENKINS,
[SEAL.] *Notary Public.*

And on the same day respondents filed protest against surrebuttal evidence being taken by the complainants in the words and figures following, viz:

188 United States Circuit Court, District of Connecticut. In Equity.

THE WHITMAN SADDLE CO.
v.
SMITH, BOURN & CO.

Messrs. Duncan, Curtis & Page, compl't's sol'rs, 120 Broadway, New York city.

GENTLEMEN: I received a communication from you stating that in the suit of The Whitman Saddle Co. *v.* Smith, Bourne & Co. you will take testimony Saturday, December 10th, 1887, at 11 a. m.

Please take notice that I object to your taking any further testimony whatever on the ground that you have no right so to do; on the ground that all the testimony in this case is already finished; and please take further notice that at the hearing on this case or at some prior time, of which I will give you due notice, I shall move the court to strike out, cancel, and expunge from the record all testimony you may hereafter take.

Respectfully,

WM. EDGAR SIMONDS,
Resp's Sol'r.

On the 9th day of December, 1887, at Hartford, Connecticut, I mailed to Duncan, Curtis & Page, 120 Broadway, New York city, a true and attested copy of the annexed notice, receiving therefor the Hartford postmaster's receipt therefor, attached thereto, and subsequently received the receipt of Duncan, Curtis & Page therefor, attached hereto.

Attest: GEORGE G. HADDOW.

189 DISTRICT OF CONNECTICUT, } *ss:*
County of Hartford, State of Connecticut, }

Sworn to at Hartford, in said district, State, and county, this 17th day of May, 1888, before me—

A. B. JENKINS,
[SEAL.] *Notary Public.*

(Registry return receipt.)

And on the same day stipulation as to evidence and notice as to taking of same were filed in the words and figures following, viz:

190 United States Circuit Court, District of Connecticut. In Equity.

WHITMAN SADDLE & Co.
v.
SMITH, BOURNE & Co.

Stipulation.

It is stipulated and agreed by and between the parties to the above-entitled case that evidence may be taken by either party before a notary public, to have the same effect as if taken before an examiner.

DUNCAN, CURTIS & PAGE,
Compl't's Son'rs.
W. E. SIMONDS, *Resp's' Sol'r.*

June 13, 1887.

191 United States Circuit Court, District of Connecticut. In Equity.

THE WHITMAN SADDLE Co.
v.
SMITH, BOURNE & Co.

Messrs. Duncan, Curtis & Page, complainant's solicitors, 120 Broadway, New York city.

GENTLEMEN: Please take notice that on Monday, the 27th day of June, 1887, at 2 p. m. in the afternoon, at the Southern hotel, in the city of St. Louis, in the State of Missouri, evidence will be taken in said respondents' behalf under the 67th rule of the Supreme Court, of equity, as amended. This hearing will be adjourned from day to day until completed. It is your right to attend and cross-examine.

W. E. SIMONDS,
Sesp. Sol'r.

Dated June 18th, 1887.

Service accepted June 20th, '87.

DUNCAN, CURTIS & PAGE,
Compl't's Sol'rs.

And on the 7th day of February, 1889, respondents' evidence was filed in the words and figures following, viz:

192 United States Circuit Court, District of Connecticut.

WHITMAN SADDLE COMPANY
vs.
SMITH, BOURN & COMPANY. } In Equity.

ST. LOUIS, MISSOURI, *June 27th*, 1887.

Testimony taken on behalf of respondents for final hearing pursuant to the 67th rule of the U. S. Supreme Court, in equity, as amended, before Millard F. Watts, notary public in and for the city of St. Louis and State of Missouri and special examiner herein by consent.

Present: Henry L. Buck, Esq., for complainant, and W. E. Simonds, Esq., for respondents.

It is hereby stipulated and agreed that respondents' proofs herein for final hearing may be taken before Millard F. Watts, of the city of St. Louis, Missouri, notary public, with the same force and effect as if an order appointing him special examiner had been duly entered.

JOHN S. SULLIVAN, being duly called and sworn on behalf of the respondents, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is John S. Sullivan; my age is forty-seven; I reside at Jefferson City, Missouri, and am a manufacturer of saddle-trees.

Q. 2. What is the name of your business concern?

A. J. S. Sullivan Saddle-Tree Company.

193 Q. 3. What is your average daily production of saddle-trees?

A. We make from thirty to forty dozen saddle trees a day.

Q. 4. How many of any one kind or style of saddle-tree have you made and sold during the seven years last past?

A. Of what is known as the Morgan tree I have made, to the best of my belief, in the last seven years between two hundred and fifty thousand and three hundred thousand trees.

Q. 5. How many different styles of saddles or saddle-trees are or have you been acquainted with?

A. I presume we have made over a thousand different styles since I have been in business.

Q. 6. What is your present range of styles in use?

A. We make seven hundred and fifty, about.

Q. 7. Is it or not customary in the making of saddle-trees and saddles to alter and change the construction as dictated by the taste or fancy of different persons?

A. Yes, sir.

(Question objected to by complainant's counsel as misleading.)

Q. 8. To what degree is this customary—is it rarely done or otherwise?

(Same objection.)

A. Very frequently done, sir.

Q. 9. I show you a photograph of a saddle-tree. (Same shown witness.) Who, if you know, made the saddle-tree from which that photograph was taken?

(Objected to on the ground that the tree itself should be shown and not the photograph.)

A. Yes, sir; I think I made that tree.

(Photograph shown witness is offered in evidence and marked Respondents' Exhibit Photo. of Sullivan's Granger Tree.)

Q. 10. Has that tree a name in the trade?

A. Yes, sir.

11 Q. What is the name?

A. The Granger.

12 Q. Have you ever made such Granger trees?

194 A. Yes, sir.

Q. 13. Since what time have you made and sold such Granger trees?

A. To the best of my recollection, we commenced to manufacture Granger trees in 1875 or 1876.

Q. 14. You say to the best of your recollection?

A. Yes, sir.

Q. 15. Have you or not any doubt about it being in 1875 or 1876?

A. No, sir; I feel positive it was the latter part of 1875 or the early part of 1876 we commenced making the Granger trees.

Q. 16. Was or was not that making referred to in your last answer a making and selling in the regular course of trade?

A. Yes, sir; it was.

Q. 17. Have you at any time since said 1875 or the early part of 1876 ceased to make and sell such Granger trees in the regular course of trade?

A. No, sir.

Q. 18. Before you thus made and sold the Granger tree had you or had you not seen such trees in public use or on sale?

A. Yes, sir; I had.

(Question and answer both objected to as incompetent and immaterial.)

Q. 19. How about the size of these Granger trees that you have made and sold in the regular course of trade since 1875 or early part of 1876?

A. They run from 13 inches up to 18.

(Question objected to as irrelevant and immaterial.)

Q. 20. Do those "inches" refer to the length of the saddle-tree?

A. Yes, sir. Some are made broad cantle and some are made narrow cantle. We made various styles of them to suit customers.

Q. 21. I show you a photograph of another saddle-tree. (Same

shown witness.) I direct your attention to the peaked cantle at the rear end. Are you or are you not familiar with saddle-trees having such peaked cantles.

195 A. I am, to some extent.

(Objected to because the tree itself should be shown. The photograph is misleading.)

Photograph last shown witness is offered in evidence and same is marked "Respondents' Exhibit Photo. of Jenipher-McClellan Tree."

Q. 22. How long have you known of such a peaked cantle upon saddles in public use or on sale?

(Objected to as incompetent.)

A. About ever since I have been manufacturing saddle-trees—twelve or thirteen years. In fact I rode a saddle-tree with that kind of cantle on it in the army in 1863.

Q. 23. On how many different styles or kinds of saddles or saddle-trees did you know such a peaked cantle used, say prior to the year of 1876?

A. Three, I think.

Q. 24. Can you state the names of those three kinds?

A. "Military Jenifer," the "Dragoon tree," and, I think, a tree called the "Grant tree" was the other one.

Q. 25. At what place or places has your manufacture and sale of saddle-trees that you testify to been carried on?

A. At Jefferson City, Missouri.

Q. 26. How early did you make and sell saddle-trees having such peaked cantles?

A. I suppose—I can't tell about that exactly—I suppose it must have been in 1876 or 1877 I commenced making the tree called the "Military Jenifer." The "Military Jenifer" and this exhibit are one and the same tree.

Q. 27. When you say "this exhibit" you mean Respondents' Exhibit Photo. of Jenifer-McClellan Tree?

A. Yes, sir.

Q. 28. Do you know anything of the Whitman saddle, so called?

A. I have seen the saddle about different saddlery houses in the city of St. Louis.

Q. 29. Do you know anything as regards whether they wear well and last well in practical use?

(Objected to as incompetent.)

196 A. All I know is what I have heard the trade say and what I have seen.

(Objected to as secondary, that part as being hearsay.)

Q. 30. What have you thus seen and thus heard in that regard?

A. Mr. Allen, of the firm of Hayden and Allen, who was, I think, one time agent of the Whitman saddle-trees in the city of St. Louis, told me it was a very weak tree. Jacob Strauss and Mr. Heiddle-

man, of Heiddleman-Benoist, told me the same thing. I have seen as many as a half a dozen of the Whitman saddle-trees broken. That is about all I know of it.

(Same objection as before, and also because irrelevant and immaterial.)

Q. 31. You say you have seen the Whitman saddles. From your own sight and examination of them, what do you say of their strength in comparison with other patterns and styles of saddle-trees?

(Objected to as irrelevant and immaterial.)

A. In comparing them with the better classes of saddle-trees I would say that they are inferior in strength.

Q. 32. Are Jacob Strauss and Mr. Heiddleman you mention in the saddle business?

A. Yes, sir.

Q. 33. Where?

A. In the city of St. Louis.

Q. 34. Have you or have you not sent Smith, Bourn & Company, of Hartford, Connecticut, such a Granger saddle-tree as is shown in Respondents' Exhibit Photo. of Sullivan's Granger Tree?

A. Yes, sir; I sent them a 17 or 18 inch Granger tree.

Respondents' counsel states that he is through with the examination-in-chief of this witness, except that he has used for this examination a photograph of the Granger tree, and will recall this witness to offer in evidence one or more of his Granger trees when they arrive, they having failed so far to arrive by express as expected and ordered.

197 Cross-examination:

X Q. 1. Is your business concern incorporated?

A. Yes, sir.

X Q. 2. Under the laws of what State?

A. Missouri.

X Q. 3. Who is the president?

A. W. Q. Dollmeyer.

X Q. 4. Who are the other officers?

A. I am the secretary and treasurer.

X Q. 6. Have you an active manager of the concern?

A. Yes, sir; I manage the business.

X Q. 7. Do you manufacture the goods with men obtained in the usual course of trade outside of penal institutions?

A. I don't exactly understand that question. Make it plain and I will answer it, of course.

X Q. 8. I consider the question plain as stated.

A. Just read that question to me again, will you?

(Question read.)

A. I use foremen; the principal men I work are convicts.

X Q. 9. What proportion of the men are convicts?

A. About ninety-two per cent., I guess, sir.
X Q. 10. Are these convicts in any State penitentiary?
A. They are.
X Q. 11. Of what State and where located?
A. State of Missouri, at Jefferson City.
X Q. 12. How many convicts do you employ?
A. 150 to 225.
X Q. 13. How much do you pay them *per diem?*

(Objected to as immaterial and irrelevant.)

A. I pay 40 and 45 cents a day.
X Q. 14. What proportion of the convicts covered by your figures are in the commencement skilled saddle-tree makers?

(Same objection.)

A. None.
X Q. 15. In answer to question 4, giving number of Morgan trees made, what would be the average price at which sold?
198 A. Well, sir, from about nine to ten dollars a dozen.
X Q. 16. What would be the lowest?

(Same objection.)

A. Canvass trees, four dollars a dozen; hide trees, nine to ten.
X Q. 17. In your answer to question 26 you name the "Military Jenifer." Is that the saddle which I show you illustrated in this book?

(Book shown witness and marked for identification Complainant's Exhibit Letter "G."

A. Yes, sir.
X Q. 18. Have you ever seen the saddle-tree from which the photograph marked Respondents' Exhibit "Photo. of Jenifer-McClellan"?
A. No, sir.
X Q. 19. Was the tree made by you?
A. Not that I know of.
X Q. 20. Do you have a published catalogue illustrating sizes of trees?
A. I have.
X Q. 21. Do you have one in use now?
A. I have.
X Q. 22. Does it contain an illustration of a saddle-tree similar to that I now show you?

(Marked for identification Complainant's Exhibit Letter "H."

A. No, sir.
X Q. 23. Have you ever issued a catalogue containing an illustration similar to this?
A. I have not.
X Q. 24. Did you not at a time about two years ago issue such a

catalogue, containing a cut or picture or illustration similar to this, and then withdraw it from the hands of your salesmen and others?

(Objected to as immaterial and irrelevant.)

A. No, sir; I have never issued a catalogue and withdrew it from the trade.

X Q. 25. Have your salesmen made use of an illustration similar to this in selling their goods?

(Same objection.)

199 A. No, sir; not with my knowledge and consent.

X Q. 26. Do you recognize the cut shown as that of the Whitman tree, known as No. 1 to the trade?

A. I don't know what that tree is known to the trade by. I know there is a tree that was called the No. 1 Whitman.

X Q. 27. Do you make and sell a tree under that name?

A. No, sir.

X Q. 28. Or similar to the illustration?

A. I make no tree and sell it by the name of Whitman.

X Q. 29. Do you make and sell a tree similar to the illustration and which is stated to be known to the trade and printed in Whitman catalogue as tree No. 1?

A. I make and sell what we call the Park tree, canvass back, something like the tree shown in the cut.

X Q. 30. Do you sell such trees to Smith, Worthington & Co.?

A. No, sir.

X Q. 31. Did you sell such trees to C. B. Smith & Company, of New York city?

A. No, sir.

X Q. 32. Have you been or are you now selling such trees to Smith, Bourn & Company at Hartford?

A. I have.

X Q. 33. How long have you been selling them such trees?

A. I can't tell.

X Q. 34. Have you sold them one thousand?

A. No, sir.

X Q. 35. Have you sold them five hundred?

A. No, sir.

X Q. 36. Is your correspondence with Smith, Bourn & Company or with Smith, Worthington & Company or their predecessors in New York on the subject of saddle-trees?

A. With Smith, Bourn & Company, of Hartford, Connecticut.

X Q. 37. Have Smith, Bourn & Company, of Hartford, advised you that suit had been entered against them by the Whitman Saddle Co.?

A. They have.

X Q. 38. Did they say that the saddle-trees in the saddles on which the suit is based were made by you?

200 A. I think they said in some of the saddles.

It is stipulated by the parties to this cause that the saddle-tree

contained in the saddle Complainant's Exhibit A was made by the J. S. Sullivan Saddle-Tree Company, sold by that company to Smith, Bourn & Company, of Hartford, Connecticut, and made into a saddle and sold by Smith, Bourn & Company.

It is also stipulated between the parties to this cause that the saddle-trees respectively shown on two photographs, marked respectively Respondents' Exhibit Photo. of Muley Tree and Respondents' Exhibit Photo. of Kilgour Tree, were in public use and on sale in this country prior to the time that Royal E. Whitman produced the design described and claimed in complainant's patent in suit.

Respondents' counsel offers in evidence the two photographs last referred to, one being marked Respondents' Exhibit Photo. of Muley Tree, and the other Respondents' Exhibit Photo. of Kilgour Tree.

X Q. 39. When did you commence selling the trees referred to in question 32 to Smith, Bourn & Company?

A. I can't state that positively, but think it has been within the last two years.

X Q. 40. Are you sure that you have sold them no saddle-trees similar to the illustration referred to in question 32 previous to that time?

A. No, sir; I can't state.

X Q. 41. When you sold them similar saddle-trees the first time was it in response to their order for such trees without previous correspondence or solicitation, or was it in response to an interview or correspondence had with them or their representatives through you or your representatives?

A. I think when I got up the tree we call the "Park tree" I sent Smith, Bourn & Company one as a sample.

X Q. 42. Did you receive an order in response to that sample, and was the sample satisfactory?

201 A. I think the sample of that tree was satisfactory.

X Q. 43. Did they immediately or soon after order some of those trees?

A. I presume they soon after ordered some of those trees.

X Q. 44. Did Smith, Bourn & Company at any time complain about the strength, style, or workmanship of these trees being sent them?

A. Not that I remember.

X Q. 45. From what source did you obtain the pattern from which you made these first samples sent out?

A. I can't tell what house I got that sample from.

X Q. 46. Was it a Whitman tree?

A. It was what I know as the Whitman tree.

X Q. 47. Did it have the Whitman labels on it?

A. I can't tell whether it had a Whitman label on it or whether it was stamped Whitman on the iron back of the saddle.

X Q. 48. Did it have anything on it showing it was a Whitman tree?

A. Yes; it had the word Whitman on it.

X Q. 49. Anything else?

A. I don't know.

X Q. 50. Was a Whitman tree ever sent you by either Smith, Bourn & Company or C. B. Smith & Company or Smith, Worthington & Company or any member or employee of either of those houses with a request or direction to manufacture trees s-milar to it?

A. We receive so many sample trees from so many parties and places it is hard for me to say whether they sent us such a tree or not.

X Q. 51. In making the trees of this pattern which you did make did you follow the Whitman model as closely as you could, both in shape and manner of putting together?

A. Well, I suppose we did in shape; we put it together as we thought would strengthen the tree more.

X Q. 52. Does the latter part of your answer refer to the wood-work or the iron-work?

A. To both.

X Q. 53. In the wood-work where did you make a difference?

A. We used better material.

202 X Q. 54. Was the method of construction the same?

A. I don't know how Whitman made his saddle-tree; we have a system of our own.

X Q. 55. Did you take that Whitman model tree to pieces?

A. I think not.

X Q. 56. Do you know that your method of construction of the wood-work was different?

A. I think in some instances, or rather some parts, our method of construction was different, but we obtained the same shape.

X Q. 57. When you sold those saddle-trees acknowledged to have been sold in answer to question 32, did you agree to protect Smith, Bourn & Company from any resulting trouble with the Whitman Saddle Company by their use?

A. I think I did.

X Q. 57½. What was such agreement?

A. They asked me the question by letter in case the Whitman Saddle Company should interfere with them I would protect them in using that tree, or any other tree manufactured by us.

X Q. 58. What do you mean by "protect"?

A. That I would virtually stand the expense of a defense in case of a suit.

Complainants state that they are through with the cross-examination excepting as to all matters relating to the tree described as the "Granger," and will continue said cross-examination after the arrival of said Granger tree.

Redirect examination:

R. D. Q. 1. Have the Park trees that you have sold been covered with white or black canvas?

A. Black canvass.

R. D. Q. 2. Are the Whitman trees covered with white or black canvas?

A. All that I ever saw either not covered at all or covered with white canvass.

R. D. Q. 3. Have you made and sold fifty of the Park trees with the peaked cantle?

A. I think not.

203 R. D. Q. 4. Was the agreement mentioned in question and answer 57 made at the time of selling the trees or afterwards?

A. I think the correspondence was after I had sold the first lot.

R. D. Q. 5. What did you get from Smith, Bourn & Company for the Park trees?

A. Twenty-one dollars a dozen, I think, was the price.

J. S. SULLIVAN recalled and examined by Mr. SIMONDS:

R. D. Q. 6. Can and will you produce a saddle-tree properly representing the Granger tree, which you testify you have made and sold since 1875 or the early part of 1876?

A. Yes, sir; this is the tree (taking hold of Respondents' Identification Exhibit Z).

Respondents' counsel offers the tree produced in evidence as Respondents' Exhibit Sullivan's Granger Tree.

R. D. Q. 7. Will you explain how you proceed in beginning the manufacture of a new-style tree, how you came to begin the manufacture of the Park tree, and how you came to agree to protect Smith, Bourn & Company if they were sued for alleged infringement?

A. In the beginning of the manufacture of new styles, some customers either send us new trees or take old trees, cuts away or builds up to suit his idea, or suggests certain changes to be made on certain trees to suit his ideas; then we go to work and produce a tree according to his instructions. Some of our trade began to make inquiries and asking for trees similar to those; then we made what we called the "Sport tree," the "Daisy tree." The Daisy tree was made as far back as eight years ago. We made the Park tree. We made changes and alterations on the Park tree to suit our trade. I wish to correct some of my statements yesterday about when I commenced to make the Park tree. I now think it was three years ago, and after Smith, Bourn & Company had ordered and received some Park trees they wrote and said that the Whitman folks were liable to sue them for infringement. I wrote in reply and stated that I would protect them in the use of the Park tree or any other of our manufacture; that I had always protected our trade in suits for alleged infringements of any tree that we made.

204 Recross-examination:

R. X Q. 59. What do you understand when you apply the descriptive words "Park tree" to be the tree thereby described?

A. A tree similar in appearance to the Whitman tree.

R. X Q. 60. Do you mean not one tree, but several trees, each different, but each one like in appearance some tree known as the Whitman tree?

A. I think we make one style of tree, called the Park tree, that is not like the Whitman tree.

R. X Q. 61. That tree is known as your Park tree?

A. Park tree No. 3.

R. X Q. 62. Have you ever issued a catalogue illustrating these Park trees?

A. I have never issued a catalogue or price-list of the Park tree. I have only furnished them to such trade as ordered them. I have sent out samples of them to the trade that would probably want that style of tree.

R. X Q. 63. How often have you issued a catalogue since your company was formed, and when was it formed, and when did it go into active operation at Jefferson City, with yourself as manager?

A. First commenced manufacturing saddle-trees at Jefferson City in June, 1874, under the style of J. S. Sullivan & Company, and in 1876, I think it was, we incorporated under style of J. S. Sullivan Saddle-Tree Company, and I have been the active manager during that time. I first issued price-lists without any illustrated catalogue of pictures. I then sent to the trade photographs of the leading and popular styles of trees. Some time from 1877 to 1879 I got out an illustrated catalogue. Since sending out photographs I have issued, I think, three illustrated catalogues.

R. X Q. 64. Is the saddle-tree known in this case as Respondents' Exhibit Sullivan's Granger Tree, included in your illustrated catalogue issued in 1877 to 1879, in the identical shape as shown in this tree?

A. I don't think I have ever changed the make-up or style of the tree, except in some instances where parties desired changes. Some want the head a little higher; some want a more rounding front; some want the cantle more rounding. We have made them in all sizes, from boys' up to 18 inches.

(Answer objected to as not responsive to the question.)

205 Answer continued: And then we make some called the narrow cantle-tree.

R. X Q. 65. Is this tree illustrated in your catalogue of 1877 to 1879?

A. The first catalogue I ever issued had a Granger cut in it.

R. X Q. 66. Will you produce such a catalogue and offer same in evidence?

A. Yes, sir; catalogue dated January 15th, 1885; in which appears a Granger cut, No. 230. It has a half-front view. That is the only Granger cut I ever had made.

R. X Q. 67. Was this the same cut included in the catalogue of 1877 to 1879?

A. That same cut has been used in all catalogues issued by me since I have been manufacturing saddle-trees.

R. X Q. 68. Have you ever issued a catalogue which, instead of being in usual book form, was oblong in shape, same as though it were printed and bound with the pages lengthwise instead of vertical, as in catalogue in evidence?

A. I never issued a regular catalogue other than the one here produced.

(Answer objected to as not responsive.)

Answer continued: That is, I mean, or rather a descriptive catalogue. I once issued, prior to the descriptive catalogue, a book of photographs of saddle-trees, and that comprises all photographs or catalogues I ever issued.

R. X Q. 69. Will you produce a copy of that catalogue?

A. Which catalogue?

R. X Q. 70. The one described as the compound of photographs and cuts.

A. I never issued such a catalogue as a compound of photographs and cuts.

R. X Q. 71. Are the Park trees you make of different kinds known by different numbers?

A. Yes, sir.

R. X Q. 72. Is the one with the peaked cantle known as the No. 1?

A. We call the one with the peak and the one without
206 the peak the No. 1; they are designated as the Park No. 1 fan-tail or Park No. 1 round cantle.

(It is stipulated by and between the parties hereto that the tree sold by the J. S. Sullivan Saddle-Tree Company as "Park tree No. 1, fan-tail," is the same tree as that contained in Complainant's Exhibit A.)

R. X Q. 73. Have you also sold Park trees known by you as No. 1 fan-tail to Wells & French, of Bridgeport, Connecticut, or Miller, Morrison & Co., of New York city?

A. I have not. Miller, Morrison & Company at one time wrote for prices of the Park tree; I did not send them for the reason that they bought no other style of tree of us.

R. X Q. 74. Will you please write on paper in the manner shown on this sheet these words so I can produce them in evidence?

(Objected to as not germane to the direct examination and irrelevant to the issues.)

A. I will do so.

(Witness does so.)

(Witness writing for identification Complainant's Exhibit John S. Sullivan's Writing.)

R. X Q. 76. In a catalogue of yours shown you, are the characters therein in pencil not colored black written by you?

(Same objection.)

A. I don't know whether I wrote them or not.

R. X Q. 77. Do you make a Park tree No. 6?

(Same objection.)

A. Yes, sir.

R. X Q. 78. Do you sell it at $22.00 a dozen?

(Same objection.)

A. I think the most I ever charged for any Park tree except the one with the fan-tail is $21.00. That is my recollection of the prices.

207 Complainant offers in evidence the catalogue referred to in cross-question No. 77 and the writing therein, and mark-same for identification Complainant's Exhibit "M."

Witness states: Before I commenced to manufacture the Park tree I ascertained that the Whitman tree was claimed to be patented I sent and got their patent papers, and after a full and careful examination I concluded that the patent was wrongfully issued and that Whitman was not entitled to his patent, as everything about his tree was old long prior to the issue of his patent.

JOHN S. SULLIVAN.

Sworn to and subscribed before me this 28th day of June, 1887.

MILLARD F. WATTS,
Notary Public, City of St. Louis, Mo.

It is stipulated by and between the parties to this cause that prior to the time that Royal E. Whitman produced the design described and claimed in the complainant's patent in suit there were in public use and on sale in this country for saddle-making saddle-trees the same as Respondents' Exhibit Straus-Granger Tree and the same as shown in the cut entitled "Granger Canvassed" (No. 230, page 70), in the catalogue of the J. S. Sullivan Saddle-Tree Company, which is offered in evidence and marked on the title-page Respondents' Exhibit Sullivan's Catalogue.

HENRY RUWART, being duly called and sworn on behalf of the respondents, testified as follows:

Direct examination by Mr. SIMONDS:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Henry Ruwart; my age is forty-three; I reside at Jefferson City, Missouri, and am a saddle-tree maker.

Q. 2. How long have you been connected with the making of saddle-trees?

208 A. Over twenty-five years.

Q. 3. How many different styles of saddle-trees have you seen or worked upon?

A. I couldn't say exactly, but I guess a thousand—not less than a thousand during my time, different shapes and styles.

Q. 4. Is it or not customary for saddle-tree makers to vary the

shape and appearance of saddle-trees according to the taste and fancy of customers?

A. Yes, sir.

Q. 5. To what extent is that done?

A. They specify they want them longer, shorter, broader, and narrower, higher and lower, at different parts of the tree.

Q. 6. How long have you been familiar with such a peaked cantle as is shown on Respondents' Exhibit Photo. of Jenifer-McClellan Tree?

A. About twenty years.

Q. 7. Has such a peaked cantle been in public use all that time?

A. I have seen them since and made them.

Q. 8. Prior to 1876 on how many different styles of saddles that were in common and public use did you know such a peaked cantle to be used?

A. Three or four different styles.

Q. 9. What were those three or four different styles called?

A. One was called the "Rio Grande," the other the "Ringgold," the "Military Jenifer," and "McClellan."

Q. 10. Were those four uses all in this country?

A. Yes, sir.

Q. 11. Have you or not in the past been familiar with such a saddle-tree as is shown in Respondents' Exhibit Photo. of Sullivan's Granger Tree?

(Same objection, and to the one relating to the Jenifer-McClellan, as was made when the question was asked previous witness.)

A. I am.

Q. 12. What is the name by which you know the tree shown in the photo. last mentioned?

209 A. I know that tree by the name of "Granger."

Q. 13. How long have you known of such Granger trees in public and common use?

A. About twelve years.

Q. 14. Where were you working then?

A. In Jefferson City, Missouri.

Q. 15. For whom were you working then?

A. J. S. Sullivan Saddle-Tree Company.

Q. 16. Were such Granger trees made and sold by the J. S. Sullivan Saddle-Tree Company in the regular course of business twelve years ago?

A. Yes, sir.

Q. 17. Has the J. S. Sullivan Saddle-Tree Company made and sold such Granger trees in the regular course of business ever since?

A. Yes, sir.

(Witness shown Respondents' Exhibit Photo. Jenifer-McClellan Tree.)

Q. 18. How long have you known of trees such as are shown in

the photograph I now hand you being in public use and on sale by the J. S. Sullivan Saddle-Tree Company?

A. We have made that tree in 1876 according to my recollection.

Q. 19. And ever since?

A. Yes, sir.

Q. 20. In the regular and ordinary course of business?

A. Yes, sir.

Cross-examination by Mr. BUCK:

X Q. 1. Have you stated that you consider the saddle which you understand to be shown by the photograph marked Respondents' Exhibit Photo. of Jenifer-McClellan to be the same, in your judgment, as the saddle illustrated and named as Military Jenifer and identified as Complainant's Exhibit G?

A. This tree here (pointing to the photograph) is not exactly the same shape as this one (indicating "G").

210 X Q. 2. What, then, do you understand by the saddle called the Military Jenifer?

A. I understand the Military Jenifer tree is made like this (indicating photograph), with a little variation in the horn, in the back of the bar, and at the foot of the cantle, the bottom of the cantle.

X Q. 3. Wherein do you distinguish differences between the Military Jenifer, in your mind, and the illustration marked Complainant's Exhibit G, if any?

A. I consider this (indicating "G") somewhat a poor shape of a Military Jenifer.

X Q. 4. In what particulars?

A. The outer edge of the bar and the lower edge of the cantle.

X Q. 5. Have you ever seen the saddle-tree from which the photograph marked Jenifer-McClellan is taken?

A. I have made so many that I couldn't tell.

X Q. 6. Do you think that you made this tree, or that it was made under your supervision?

A. I couldn't say.

X Q. 7. Can you give the reasons for your doubt?

A. I have made so much of that kind of work during my time that it is almost impossible to keep track of it.

X Q. 8. Can you tell whether the saddle-tree from which the photograph identified "Sullivan-Granger" is taken was made by you or under your supervision?

A. I think that tree was made under my supervision.

X Q. 9. Can you tell when it was made?

A. I could not tell that.

X Q. 10. Was it made lately?

A. It might be; we make them right along.

X Q. 11. Was it made during the last year?

A. I couldn't say.

X Q. 12. Is there, then, nothing in the photograph to show you how long the tree has been made?

A. There is nothing that I can see, anything special; we have made trees like that for a number of years.

X Q. 13. How many years?
A. About twelve.

Further deponent saith not.

HENRY RUWART.

211 Sworn to and subscribed before me, at the city of St. Louis, in the State of Missouri aforesaid, this 27th day of June, 1887.

MILLARD F. WATTS,
Notary Public, City of St. Louis, Mo.

SAMUEL HATHERAL, being duly called and sworn on behalf of respondents, testified as follows:

Direct examination by Mr. SIMONDS:

Q. 1. What is your name, age, residence, and occupation?
A. My name is Samuel Hatheral. I will be fifty-five years of age in November, this year. I reside at Cincinnati, Ohio, and I am not engaged in any particular business just now.
Q. 2. Were you ever connected with the manufacture of saddle-trees?
A. Yes, sir.
Q. 3. Where?
A. In Cincinnati, Ohio.
Q. 4. From what time to what time?
A. I think we commenced business in 1855. We disposed of our business in July, 1883, I think it was.
Q. 5. What was the name or names of your business concern or concerns from 1855 to 1883?
A. Well, originally it was Hatheral & Gosker, and then I think it was Samuel Hatheral for awhile; then Hatheral & Company, and then Hatheral & Park.
Q. 6. How many different styles of saddles have you known of?
A. I couldn't state positively as to that, but some hundreds.
Q. 7. Was it or not customary for saddle-tree makers to vary the shape and appearance of saddle-trees according to the taste and fancy of purchasers?
A. It was.
Q. 8. Was this rarely done or often done?
A. Well, it was done more after the war than previous to the war, but it was often done all the time.

212 Q. 9. I show you a catalogue of saddle-trees purporting to be issued by Hatheral & Park. By whom, if you know, was that catalogue issued?

(Catalogue here shown witness.)

A. It was issued by Hatheral & Park aforesaid.
Q. 10. How early did you know of saddle-trees or saddles in public use and on sale in this country having such a peaked cantle as is shown in the cut in that catalogue, which is marked "Military Jenifer"?

A. We made those as early as 1868 or 1869, or a little before that; at that time, anyway.

(Catalogue last referred to is offered in evidence as Respondents' Exhibit "Hatheral and Park's Catalogue.")

Q. 11. Prior to 1876, on how many different styles of saddles did you know such a peaked cantle to be used?

A. The first one that I have special or actual knowledge of is the Grimsley, which we made as early as 1861. Then I know about this Jenifer; we made large numbers of those. Then we have at times—I recollect of making a French style of tree, and we have made them at various times when they have been required. We made quite a large number of them for A. Ortmeyer, of Chicago, a style which was called the Alexis.

Q. 12. How early in the regular course of trade did you make and sell the style of saddle-tree which in Hatheral & Park's catalogue is marked "Granger"?

A. We made them from about 1873 to the time that we sold out our business, in 1883; we made them continuously in large numbers.

Q. 13. How early did you issue such a catalogue as this one—Respondents' Exhibit "Hatheral & Park's Catalogue"?

A. We issued them as early as 1871.

Q. 14. How early did you issue such a catalogue as this—Respondants' Exhibit Hatheral & Park's Catalogue—containing the said Granger cut?

A. Well, we issued them in 1873 and in 1875; I am positive it was in the 1875 number, but I wouldn't state positively about the previous ones.

213 Q. 15. Did you ever make a so-called "Boyd's" saddle-tree?

A. We did.

Q. 16. How early, if you remember?

A. My impression is that it was about 1870.

Q. 17. Do you remember the name and address of any party or parties for whom you made the Boyd tree?

A. We made them for Day and Jones, of Baltimore, Maryland.

Q. 18. How many or about how many did you make for Day and Jones?

A. I couldn't state the number.

Q. 19. Could you state the number approximately, as to whether it was one dozen or many dozens?

A. We made quite a number, but the number we made for Day and Jones I couldn't state approximately.

Q. 20. In those early days did you make and sell as many as one hundred?

A. Yes, sir.

Q. 21. I show you a photographic reproduction of the photographic illustration accompanying the Whitman patent in suit. (Same shown to witness.) How did that Boyd tree differ from the Whitman tree on this photograph?

A. The Boyd tree—the outline of the Boyd tree—was very much similar, with the exception that it had no peak on the cantle, and then, at the junction of the bar and the head or forepart, the bar was not as straight as in the photograph, or, in other words, was extended farther down than the bar, but otherwise the outlines, the fork or head, are very much similar.

Cross-examination by Mr. BUCK:

X Q. 1. Do you consider the illustration marked "Granger" in the catalogue that was shown you a fair picture of the tree?

A. Well, what I must state as regards that, these outlines are changed from time to time (pointing to the curve in the bar between lower part of fork and cantle), as parties that made the saddles, they would want that changed to suit their notions, and that, of course, would change according to the notions of the parties who wanted them; we made them accordingly. That might have
214 represented the Granger at the time the photograph was taken, but the outlines might have been changed materially in six months or shortly after that.

X Q. 2. Did your last answer mean that the change in the lower line of the tree would to that extent change the outline of the tree?

A. Well, yes; it would make it have a different appearance.

X Q. 3. Was the Granger tree otherwise made similar to the picture in the years 1875 and 1876?

A. Well, at that time we would make them different to different parties.

X Q. 4. Can you tell me what you charged for these trees per dozen in 1875 and 1876?

(Objected to as immaterial and irrelevant.)

A. I could not without reference to the books or bills.

X Q. 5. Was it over $12.00 a dozen?

(Same objection.)

A. I think it was.

X Q. 6. When you made the alterations you state you did on this tree for other parties did the tree continue to be known by you and your customers by the same name?

A. Yes, sir.

X Q. 7. Would this picture (indicating Granger in said Hatheral & Park's catalogue) enable you to identify all such trees made, notwithstanding the modifications?

A. I think it would.

X Q. 8. Whenever customers ordered changes on saddle-trees generally would they specify the tree they desired, naming the change, and would the tree after such changes continue to be known by the same name, notwithstanding the modifications?

A. Well, sometimes they would and sometimes the parties requiring these changes, if they did not wish them to be put on the general market, would change the name somewhat.

X Q. 9. Do you consider the illustration in Hatheral & Park's catalogue in evidence, named the "Military Jenifer," a fair illustration of the saddle-tree as made in 1875 and 1876?

215 A. Well, that was also modified in quite a number of instances.

X Q 10. Please name such modifications as you remember.

A. The cantle was changed, so as to change the appearance of the peak according to the tase of the parties; also what we call the bar was changed and modified.

X Q. 11. Are these all the changes you remember?

A. Well, the fork would be changed to suit the taste of the parties.

X Q. 12. Were all these changes made in or before the year 1876?

A. Well, I know there were quite a number of changes made after 1876. This peak was taken away altogether in some instances, so as to leave a round cantle.

X Q. 13. Were all those changes you have named made during or before 1876?

A. We may have changed it previous to 1876 and after 1876.

X Q. 14. Do you remember clearly whether the changes named were made before or after 1876?

A. We had a tree similar to the one in the cut as a standard. According to the section of the country the trees were sent to or used, those changes would be made for the parties that we knew the style they wanted.

X Q. 15. Were these changes made as well before as after 1876?

A. I haven't a doubt but what they were.

X Q. 16. Were any of these trees so changed known by different names from the Military Jenifer? If so, what were they?

A. Well, as a rule, when we made changes in trees, we would give them the names of the parties ordering them, without they gave us a special name for them.

X Q. 17. Did you attach to the name of the party so ordering always the word "Jenifer"?

A. We did always, unless they gave us a special name. That was usually done to mystify the matter, so that competing houses would not know how to order the style of tree.

X Q. 18. Was the Military Jenifer with the peak cut off known by you as the "Excelsior"?

A. It might have been known by the name of Excelsior.

X Q. 19. I show you here a saddle-tree in rather bad re-

216 pair, to which features you need not pay any attention, but otherwise would you know it as the Granger tree?

(Same shown witness; marked for identification Complainant's Exhibit "K.")

A. No, sir; I would call that a Kilgour.

X Q. 20. Wherein would it differ from the Granger shown in picture in Hatheral & Park's catalogue?

A. The construction is different.

X Q. 21. In what particulars?

A. All the different parts are constructed differently.

X Q. 22. If it were cut up into the bar more on the lower side, between pommel and cantle, would you then consider it a Granger after the manner of the picture?

(Objected to as immaterial.)

A. No, sir.

X Q. 23. Were all the catalogues of Hatheral & Park, of which there are three at this moment in use, printed at the same time?

A. I think these are all the same edition.

Redirect examination:

R. D. Q. 1. Does the Granger cut in the Hatheral & Park catalogue in evidence represent the standard Granger tree which you made and sold prior to 1876?

A. I think it does. The outline might be changed some.

R. D. Q. 2. Were these changes in the Granger tree that you have mentioned changes only in the curve, at the outer edge of the bar, and between the front and rear end of the tree?

A. That would be one of the changes. The fork would be raised and made higher so as to give more sweep in some cases. When they wanted a more expensive tree we added considerable to the cost, both in the wood-work — the iron-work.

R. D. Q. 3. Give, if you can, an instance of changing the name of the Granger tree, somewhat as mentioned in your eighth answer, where a customer had some change made.

A. Well, we would give that party's name to it who ordered that way. For instance, if Mr. Straus ordered it we would call it
217 the Strauss-Granger in that case; and then again he might want it called the Eldorado or some other name.

R. D. Q. 4. But, as I understand you, the standard form of Granger, as made by you prior to 1876, is the tree shown in the Granger cut in the Hatheral & Park catalogue in evidence?

A. Yes, sir.

R. D. Q. 5. Were Granger trees made long and short as ordered and desired?

A. Yes, sir.

R. D. Q. 6. What would you call the tree I now show you?

(Tree shown witness.)

A. That is Granger tree.

(Tree shown witness; marked for identification Respondents' Indentification Exhibit "Z.")

SAMUEL HATHERAL.

Sworn to and subscribed before me this 28th day of June, 1887.

MILLARD F. WATTS,
Notary Public, City of St. Louis, Mo.

JAMES F. LABADIE, being duly called and sworn on behalf of respondents, testified as follows:

Direct examination by Mr. SIMONDS:

Q. 1. What is your name, age, residence, and occupation?

A. My name is James F. Labadie. I am fifty years of age. I reside in St. Louis, Missouri, and am at present not engaged in anything.

Q. 2. Were you ever connected with the saddle and saddle-tree business?

A. I was.

Q. 3. From what time to what time?

A. I was employed in the firm of Grimsley & Company in 1853. That was my first experience in the saddle-tree business. Then, in 1861, the 10th day of May, I was employed in the
218 firm of J. B. Sickles & Company, up to 1884. I was so employed continuously from 1861 up to 1884.

Q. 4. How long ago did you know of a peaked cantle, the same as or similar to that on the Military Jenifer in Respondents' Exhibit Hatheral & Park Catalogue, in public and common use on saddles?

(Same shown witness.)

A. I first became acquainted with that tree as Grimsley's patent Dragoon. At that time two styles of them were made—a large one and a small one; and I have seen another tree in 1875 with the same cantle and a horn, called the "Grant tree," made by Mr. Blazer in the city of St. Louis.

Q. 6. What was the date of seeing this cantle on the Grimsley tree?

A. In 1853; and I think it was made long before that.

Q. 7. How many different kinds of saddles or saddle-trees have you seen, first and last?

A. From five to eight hundred styles and more.

Q. 8. How often have you known of saddle-trees being changed in their construction and appearance to suit the taste of the customers?

A. Very often, owing to the different parts of the country the trees go to. Some like them one way and some like them another. We have to make the trees to suit the trade.

Q. 9. How early did you know of a Granger tree?

A. I became familiar with the Granger tree as early as 1875; probably 1874.

Q. 10. What kinds of Granger trees did you see in public use and on sale prior to 1876?

A. Granger trees something like that (pointing to Respondents' Identification Exhibit Z, and also pointing to Respondents' Exhibit Straus-Granger tree.)

Q. 11. You say "something like that." What differences were there between those you saw prior to 1876 and these two you have mentioned?

A. I don't see any difference at all. Only one man might have this style, and another another style of Granger tree.

Q. 12. Did you not, as a matter of fact, prior to 1876, know both of these styles you have referred to to be in public use and on sale here in Missouri?

219 A. Yes, sir.

Q. 13. Since 1875 or 1874, when you first became acquainted with the Granger tree, has it ever ceased to be regularly made and sold here in St. Louis?

A. No, sir; it was sold right along.

JAMES F. LABADIE.

Sworn to and subscribed before me this 28th day of June, 1887.

MILLARD F. WATTS,
Notary Public, City St. Louis, Mo.

JACOB STRAUS, being duly called and sworn on behalf of respondents, testified as follows:

Direct examination by Mr. SIMONDS:

Q. 1. What is your name, age, residence, and occupation?

A. Jacob Straus; I am fifty-one years of age; I reside in St. Louis, Missouri, and am a wholesale saddler.

Q. 2. Have long have you been connected with the saddlery business?

A. Since 1852.

Q. 3. In that time how many different styles of saddles and saddle-trees have you known of?

A. With the different variations, probably a thousand different kinds.

Q. 4. How early did you know of there being in public use and on sale in this country saddles having a peaked cantle similar to that on the Military Jenifer in the Hatheral and Park catalogue in evidence?

A. Since 1852.

Q. 5. On how many different styles of saddles prior to 1876 did you know such a peaked cantle to be used?

A. I know of but two leading ones—that is, the old Grimsley patent Dragoon tree and the Jenifer. What few others I have seen since have originated from these two trees named.

(Objection made to last part of answer as not being in response to the question, and also being a matter of conclusion.)

220 Q. 6. I show you an old tree. It is broken, but never mind the breaks. Did you ever sell saddles made upon such a tree as that? (Same shown to witness.)

A. Yes, sir.

Q. 7. How long ago?

A. 1873.

The tree is offered in evidence and marked Respondents' Exhibit Straus-Granger Tree.

Q. 8. By what name did you know that tree at that time?

A. I called it the Straus-Granger.

Q. 9. How long did you continue to make and sell saddles on such trees as that?

A. From that time until now. However, I must add here that I made some changes between this period.

Q. 10. Did you make and sell saddles on such Granger trees as you have mentioned in the regular course of your business here in St. Louis from 1873 to the present time?

A. Yes, sir.

Q. 11. Have you during that period made them of various sizes and lengths?

A. Yes, sir.

Q. 12. In your business, as you have followed it, how often have you had occasion to change the construction and outer appearance of trees to suit the taste and fancy of the customers?

A. Quite often.

Q. 13. How many of any one kind of saddles or saddle-trees do you sell in a year?

A. Five hundred dozen or more.

Q. 14. What kind of a tree do you call this Respondents' Identification Exhibit "Z"?

A. That is also a Granger tree.

JACOB STRAUS.

Subscribed and sworn to before me this 28th day of June, 1887.

MILLARD F. WATTS,
Notary Public, City of St. Louis, Mo.

221 B. F. WILLIAMSON, being duly called and sworn on behalf of respondents, testified as follows:

Direct examination by Mr. SIMONDS:

Q. 1. What is your name, age, residence, and occupation?

A. My name is B. F. Williamson; I am forty years old; I reside in St. Louis, Missouri, and I am a saddler.

Q. 2. How long have you been connected with the saddle business?

A. About twenty-five years.

Q. 3. Here in St. Louis?

A. Yes, sir.

Q. 4. Have you ever before to-day seen in public use or on sale in St. Louis such a saddle-tree as I now hand to you?

(Respondents' Exhibit Sullivan's Granger Tree handed to witness.)

A. I have.

Q. 5. When first and where?

A. I think in 1873 or 1874, at Jacob Straus Company, 415 North Main street, St. Louis, Missouri.

Q. 7. Do you know who made the first one you saw?

A. I do not.

Q. 8. Was it made by Straus, your employer, or sent there?
A. I can't answer that question.
Q. 9. What is the name of that tree?
A. "Canvas Granger" is what we usually call it.
Q. 10. Since you first saw such a Granger tree have they ever ceased to be on sale and in public use here in St. Louis?
A. Not to my knowledge.
Q. 11. Have saddles been regularly made on such Granger trees and sold here in St. Louis ever since the time you saw the first one, as you state?
A. Yes, sir; they have.

Cross-examination:

X Q. 1. You have stated that you have seen the exhibit called the Sullivan's Granger tree made up into saddles. Into how many shapes of saddles do you know of this tree being made up?
222 A. That is a little difficult to answer; every shop has its peculiar style.
X Q. 2. Is the saddle made on this tree made with anything else than a plain piece of leather on the bar?
A. Sometimes.
X Q. 4. Is it generally the case?
A. Generally the case with——
X Q. 5. What is put under?
A. Sheepskin or leather or cotton.
X Q. 6. How is the seat made?
A. In various ways.
X Q. 7. Is it always made covered and quilted?
A. Not always.
X Q. 8. How is it covered when not so covered?
A. With plain leather.
X Q. 9. All over the seat?
A. All over.
X Q. 10. How is the rigging attached?
A. With tacks or screws.
X Q. 12. Where to the saddle?
A. To the bar.
X Q 13. Can you tell what means are taken to prevent the ironing as shown on this tree from injuring the horses back?
A. By the covering of the bar.
X Q. 14. What does that covering consist of other than leather or skin, if anything?
A. Duck or canvas—cloth of any kind.
X Q. 15. Do you mean that no padding of any kind is used to keep the rough edges of the iron off the horse's back?
A. We use padding.
X Q. 16. On the saddle?
A. On the bar.
X Q. 17. Is this padding you speak of used in addition to the leather?

A. Sometimes.

X Q. 18. Not always?

A. Not always.

X Q. 19. Is anything used when the padding is not used to take the place of the padding?

223 A. Leather, sheepskin, or cloth.

Redirect examination:

R. D. Q. 1. Have these Granger saddle-trees ever since you first knew of them been made up—that is, some of them—with the slot through the center left open?

A. Not that I remember of.

R. D. Q. 2. Have you in years past seen different kinds of saddles made up having a similar lengthwise slot and that slot left open?

A. Yes, sir.

R. D. Q. 3. Is that the way of making up the McClellan saddle generally?

A. Yes, sir.

R. D. Q. 4. Has that been generally the way of making up the Princess saddle?

A. Yes, sir.

R. D. Q. 5. Is that the way of making up the Military Jenifer saddle?

A. All that I have ever made are made up that way.

R. D. Q. 6. Do you say that all the Granger trees that you have seen made up have that single slot covered up?

A. Yes, sir.

B. F. WILLIAMSON.

Sworn to and subscribed before me this 28th day of June, 1887.

MILLARD F. WATTS,
Notary Public, City of St. Louis, Mo.

224 United States Circuit Court, District of Connecticut.

THE WHITMAN SADDLE COMPANY
vs.
SMITH, BOURN & COMPANY. } In Equity.

Testimony taken on behalf of the respondents in the above-entitled cause before Henry E. Taintor, an examiner of said court, under the 67th rule in equity of the supreme court, as amended, at room No. 22, at 2 Central row, in the city of Hartford, in the State of Connecticut, beginning at 10 o'clock in the forenoon on the 7th day of July, A. D. 1887.

Present: Robert H. Duncan, of counsel for complainants; W. Edgar Simonds, counsel for respondents.

(Respondents' counsel offers in evidence four of the complainant company's catalogues, which are marked respectively Respondents' Exhibit Whitman Catalogue No. 1, Repondents' Exhibit Whitman

Catalogue No. 2, Respondents' Exhibit Whitman Catalogue No. 3, and Respondents' Exhibit Whitman Catalogue No. 4.)

(Respondents' counsel offers in evidence copy of specification and illustration of a design patent for saddles, No. 11093, issued to Royal E. Whitman, and same is marked Respondents' Exhibit Whitman Design Patent of 1879, H. E. T., ex.)

(Objected to, as said patent is of later date than patent in suit.)

(Respondents' counsel offers in evidence specification and
225 drawings of Royal E. Whitman's mechanical patent for saddles, dated January 25, 1881, number 236,923, and same is marked Respondents' Exhibit "Whitman's Mechanical Patent of January 25, 1881, H. E. T., ex.")

(Same objection as last.)

(Respondents' counsel offers in evidence copy of specification and illustration of Royal E. Whitman's design patent on saddles, dated March 22, 1881, numbered 12196, and same is marked Respondents' Exhibit Whitman Design Patent of March 22, 1881, H. E. T., ex.)

(Same objection as last.)

(Respondents' counsel offers in evidence copy of specification and drawing of Royal E. Whitman's mechanical patent for saddles, dated May 31, 1881, numbered 242,175, and same is marked "Respondents' Exhibit Whitman's Mechanical Patent of May 31, 1881, H. E. T., ex.")

(Same objection as last.)

(Respondents' counsel offers in evidence copy of specification and drawing in W. H. Jenifer's patent on saddle, dated June 26, 1860, numbered 28867, and same is marked "Respondents' Exhibit Jenifer Patent of 1860, H. E. T., ex.")

(Respondents' counsel offers in evidence a saddle-tree, and same is marked "Respondents' Exhibit Sullivan Black Granger Tree, H. E. T., ex.")

(Objected to as immaterial and incompetent so far as at present appears.)

(Respondents' counsel offers in evidence a saddle, and same is marked "Respondents' Exhibit Slotted Granger Saddle, H. E. T., ex.")

(Same objection as last.)

(Respondents' counsel offers in evidence a saddle, and the same is marked Respondents' Exhibit Slotted Granger Saddle with Jenifer Cantle, H. E. T., ex.)

(Same objection as last.)

226 (Respondents' counsel offers in evidence a saddle-tree, and the same is marked "Respondents' Exhibit Muley Tree, H. E. T., ex.")

(Respondents' counsel offers in evidence a saddle, and same is marked "Respondents' Exhibit Slotted Muley Saddle, H. E. T., ex.")

(Respondents' counsel offers in evidence a saddle-tree, and same is marked "Respondents' Exhibit Kilgour Tree, H. E. T., ex.")

(Respondents' counsel offers in evidence a saddle, and same is marked "Respondents' Exhibit Slotted Kilgour Saddle, H. E. T., ex.")

(Respondents' counsel offers in evidence a saddle-tree, and same is marked "Respondents' Exhibit Jenifer-McClellan Tree, H. E. T., ex.")

(Same objection as last.)

(Respondents' counsel offers in evidence a saddle-tree, and the same is marked "Respondents' Exhibit Park Tree, H. E. T., ex.")

(Respondents' counsel offers in evidence a saddle, and the same is marked "Respondents' Exhibit Park Saddle, H. E. T., ex.")

(Respondents' counsel offers in evidence a saddle, and the same is marked "Respondents' Exhibit Whitman Saddle, H. E. T., ex.")

(Same objection as last.)

(Respondents' counsel offers in evidence three photographs, and same are each marked "Respondents' Exhibit Smith, Bourn & Co.'s Trees, H. E. T., ex.")

(Same objection as last.)

(Respondents' counsel offers in evidence a letter from United States ordnance office, dated June 9, 1885, and same is marked "Respondents' Exhibit Ordnance Office Letter of June 9, 1885, H. E. T., ex.")

(Same objection as last.)

227 (Respondents' counsel offers in evidence a letter from United States ordnance office, dated January 29, 1886, and the same is marked "Respondents' Exhibit Ordnance Office Letter of January 29, 1886, H. E. T., ex.")

(Same objection as last.)

(Respondents' counsel offers in evidence the enclosure referred to in the letter last offered in evidence, and the same is marked "Respondents' Exhibit Enclosure, H. E. T., ex.")

(Same objection as last.)

(Respondents' counsel offers in evidence a traced drawing on tracing cloth, and same is marked "Respondents' Exhibit Enlarged Drawing from Whitman Patent in Suit, H. E. T., ex.")

(Same objection as last.)

WILLIAM T. GOODSELL, a witness on behalf of the respondents, being duly sworn, in answer to interrogatories proposed to him by W. E. SIMONDS, Esq., testifies as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is William T. Goodsell; my age is 55 years; my residence is Hartford, Conn., and my occupation is a saddler.

Int. 2. How long have you worked at the saddlery business?

Ans. Nearly forty years.

Int. 3. Prior to 1876 how many different styles of saddles or saddle-trees did you know of in public and common use in this country?

Ans. There were hundreds of them.

Int. 4. Prior to 1876 was it or was it not the custom of saddle-

makers and saddle-tree makers to alter the shape and appearance of saddles and saddle-trees to suit the tastes of different customers?

(Objected to as immaterial.)

Ans. It was.

Int. 5. Was this rarely done or often done?

(Same objection.)

Ans. It was almost an every-day occurrence.

228 Int. 6. What is the name of the cantle on Respondents' Exhibit Whitman Saddle?

Ans. What I have always called a Jenifer cantle; have always heard it called so.

Int. 7. How early did you know of saddles in public and common use in this country having such Jenifer cantles?

Ans. In the 1860's. I think it was about 1865 that I first saw one; that is as near as I can place it.

Int. 8. Prior to 1876, how many different styles of saddles in public and common use in this country and having such Jenifer cantles did you know of?

Ans. Several styles.

Int. 9. Name such of them as you can think of.

Ans. The Grimsley army tree; what was called the Cuban side tree, and Cuban man tree; then there was what was called the Hussar tree; it was originally made in France, but the trees I speak of were made here in this country.

Int. 10. Where were you living and working when you knew of these trees mentioned in your last answer?

Ans. I was living in Newark, New Jersey, and was in the employ in the first place of Condict & Horton, and afterwards in the employ of S. H. Condict, both carrying on business at Newark, New Jersey.

Int. 11. Prior to 1876, did you or not know of saddles, in public and common use in this country, having an open longitudinal slot similar to those in Respondents' Exhibit Slotted Muley Saddle, Respondents' Exhibit Slotted Kilgour Saddle, and Respondents' Exhibit Whitman Saddle?

A. I did.

Int. 12. On how many different styles of saddles did you know such central slots thus used prior to 1876?

Ans. I knew of several.

Int. 13. Name such as you can think of.

Ans. The Morgans, Princess, Shackelford, and McClellan, and the Jenifer. I don't think of any other just now.

Int. 14. Were you an inspector of saddles during the civil war from 1861 to 1865?

Ans. Yes, sir; a Government inspector at the ordnance office, Worth street, New York city.

229 Int. 15. During that inspectorship did saddles come under your inspection having such central slots?

Ans. Yes, sir.

Int. 16. In small or large numbers?

Ans. Large numbers.

Int. 17. How early, if at all, did you know of such saddle-trees as Respondents' Exhibit Jenifer-McClellan Tree in public and common use in this country?

Ans. That tree as a Jenifer-McClellan I do not know very long; I should call it a Jenifer.

Int. 18. Under whatever name you have known it, how early did you know such trees to be in public and common use in this country?

Ans. Well, I have known it anywheres from fifteen to twenty years.

Int. 19. Where were you living and working at the time or times of knowing such trees prior to 1876?

Ans. Newark, New Jersey, and was in the employ of S. H. Condict.

Int. 20. In what shop and under whose supervision, if you know, were Respondents' Exhibit Slotted Granger Saddle, Respondents' Exhibit Slotted Granger Saddle with Jenifer Cantle, Respondents' Exhibit Slotted Muley Saddle, Respondents' Exhibit Slotted Kilgour Saddle, Respondents' Exhibit Park Saddle, and Respondents' Exhibit Whitman Saddle made up from the tree?

Ans. Smith, Bourn & Co., and under my supervision with the exception of the one saddle called the Whitman. Smith, Bourn & Co.'s shop is here in Hartford, Conn.

Int. 21. Do you mean that Respondents' Exhibit Whitman Saddle was not made up from the tree at Smith, Bourn & Co.'s shop?

Ans. No, sir.

Int. 22. Was it made up from the tree there?

Ans. They were all made up from the tree there.

Int. 23. And all except Respondents' Exhibit Whitman Saddle under your own supervision?

A. Yes, sir.

Int. 24. On what kind of a tree is Respondents' Exhibit Slotted Granger Saddle made up?

230 Ans. It is made on a tree just like "Respondents' Exhibit Black Granger Tree."

Int. 25. On what kind of a tree and how is "Respondents' Exhibit Slotted Granger Saddle with Jenifer Cantle" made up?

Ans. It is made on a Granger tree with a Jenifer cantle.

Int. 26. Such a Granger tree as Respondents' Exhibit Black Granger Tree?

Ans. Same, with the exception of the cantle.

Int. 27. On what kind of a tree is Respondents' Exhibit Slotted Muley Saddle made up?

Ans. Made on a tree just like Respondents' Exhibit Muley Tree.

Int. 28. On what kind of a tree is Respondents' Exhibit Slotted Kilgour Saddle made up?

Ans. On a tree just like Respondents' Exhibit Kilgour Tree.

Int. 29. On what kind of a tree is Respondents' Exhibit Park Saddle made up?

Ans. On a tree just like Respondents' Exhibit Park Tree.

Direct examination closed.

Cross-examination:

X Int. 30. You have spoken in your direct testimony of certain different styles of saddles, namely, the Muley, the Kilgour, the Granger, the Jenifer, and the Whitman and the Park. Now, prior to 1876, were you engaged in making any of these styles of saddles? And, if so, state which of the said styles.

Ans. I superintended the making of the whole of the saddles mentioned there excepting the Whitman.

X Int. 31. Don't you want to except the Park also?

Ans. Certainly, I except the Park.

X Int. 32. These exhibits that you have referred to in your direct examination and which you say were made under your supervision at Smith, Bourn & Co.'s factory have been made recently, have they not, and when?

Ans. Yes, sir; within two months.

X Int. 33. When did you finish your work on them?

Ans. About six weeks or two months ago.

231 X Int. 34. Where were the trees obtained on which the Muley, Kilgour, and Granger saddles were made? I mean the saddles which have been offered in evidence as exhibits under these names.

Ans. The Kilgour has been in Smith, Bourn & Co.'s factory for a great many years. The Muley and the Granger trees came from the West; where I do not know.

X Int. 35. You do not know of your own knowledge, then, do you, who made any one of the trees of these three exhibits nor how long they have been made?

Ans. No, sir.

X Int. 36. Who made the tree on which Respondents' Exhibit Slotted Granger Saddle with Jenifer Cantle is built?

Ans. I do not know.

X Int. 37. You do not know, do you, how it came into the possession of Smith, Bourn & Co.?

Ans. No, sir.

X Int. 38. Do you know where the tree marked Respondents' Exhibit Jenifer-McClellan Tree came from?

Ans. No, sir; I do not.

X Int. 39. Can you produce either a Muley tree or saddle or a Kilgour tree or saddle or a Granger tree or saddle which you can testify was made prior to the year 1876?

Ans. No, sir; I cannot.

X Int. 40. Can you produce a Jenifer tree or a Jenifer saddle which you can testify was made prior to 1876?

Ans. No, sir; I cannot.

X Int. 41. When you supervised the making of the saddle with slotted Granger tree, with Jenifer cantle, did you find that tree all finished up in the factory of Smith, Bourn & Co.?

Ans. The tree was handed to me with orders to make a saddle on it.

X Int. 42. Then I understand that the extent of your work on these several exhibits has consisted entirely in taking the trees, seeing that they were covered, and the furniture, stirrups, straps, etc., properly attached. Is that correct?

Ans. Yes; that is as far as my duties extend.

X Int. 43. How long since you have been engaged in the making or superintending the making of saddle-trees?

232 Ans. I never was engaged in the saddle-tree business.

X Int. 44. Were you never engaged in superintending the making of saddle-trees?

Ans. Never directly.

X Int. 45. What do you mean by your answer?

Ans. I made suggestions to the tree-makers; that is all.

X Int. 46. When you was at work for Condict & Horton and for S. H. Condict, your business, as I understand it, was to superintend the covering and finishing of the saddles, such saddles being formed upon trees which these parties had purchased or had had made. Is that correct?

Ans. Yes, sir.

X Int. 47. Where did they get their trees mostly?

Ans. Up to within a few years they got them from C. H. Jacobus, of Newark, who was a tree manufacturer.

X Int. 48. And did you superintend the covering or making of large quantities of what you have designated in your direct testimony as the Muley, the Kilgour, the Granger, and the Jenifer saddles prior to 1876?

Ans. I will not say great quantities, but I will say quantities—numbers of each style.

X Int. 49. Of which style did you make the most prior to 1876?

Ans. They were made on the Muley tree.

X Int. 50. Which next in number?

Ans. As near as I can say, the Kilgour would come next; the Jenifer next to that; the Granger, so far as I can recollect, was used in the smallest quantities.

X Int. 51. When did you first see a saddle made upon a slotted Granger tree with a Jenifer cantle?

Ans. I could not place that, sir.

X Int. 52. Can't you tell whether it was ten years ago or not more than one?

Ans. I am not familiar with the Granger tree, with the Jenifer cantle at all. I could not place it, because I don't know?

X Int. 53. Did you ever see such a saddle until you saw the one marked as respondents' exhibit in this case?

(Objected to as not germane to the direct examination.)

233 Ans. I can't say positively that I ever did.

X Int. 54. Did Mr. C. H. Jacobus make the trees on which the Granger saddles were formed under your supervision at Condict and Horton's or S. A. Condict's?

Ans. He did not.

X Int. 55. Where were these Granger trees obtained, if you know?

Ans. From the West.

X Int. 56. What year did you first see a Granger style of saddle-tree?

(Objected to as not germane to the direct examination.)

Ans. To the best of my knowledge and belief, I saw them all previous to 1870; previous to 1870 or 1872. I have but one way of placing it. I have a particular circumstance that fixes that date. I left the employ of S. H. Condict May 31, 1872, and I saw these trees before I left his employ, and that is the only way I have of placing it.

X Int. 57. How sure are you that you saw those Granger trees before you left the employ of S. H. Condict, in 1872?

(Same objection.)

Ans. That is the only way I have of placing it. I know it was before that time.

X Int. 58. Do you know what parties in the West made those Granger trees?

(Same objection.)

Ans. I have only an impression.

X Int. 59. Please give the impression.

(Same objection.)

Ans. Hatheral & Park, of Cincinnati, Ohio.

X Int. 60. If you should become convinced that no saddle-tree makers in the West made the Granger style of trees until considerable period after the year 1872, then would you be willing to acknowledge that you was mistaken in the date at which you saw such Granger trees?

(Same objection.)

234 Ans. Most certainly. If I was convinced of it, I shouldn't stick to it; if anybody convinced me that I was wrong.

X Int. 61. After you left S. H. Condict, in 1872, when did you next have anything to do with these Granger style of saddle-trees and where?

(Same objection)

Ans. Never, until I came here to Smith & Bourn's.

X Int. 62. When did you enter the employ of Smith, Bourn & Co., the defendants in the present suit?

Ans. One year ago last November.

X Int. 63. What is your employment with this firm?

Ans. I am foreman of their saddle department.

X Int. 64. How long since you have seen a Granger saddle made up prior to the time that you superintended the construction of Respondents' Exhibit Slotted Granger Saddle?

(Same objection as last.)

Ans. A number of years.

X Int. 65. Had you seen one since you left the employ of S. H. Condict, in 1872?

Ans. I have no recollection of it.

X Int. 66. Did you receive any instructions from any person as to how Respondents' Exhibit Slotted Granger Saddle should be made up?

Ans. No, sir; only to make it in a certain style.

X Int. 67. What do you mean by "make it in a certain style"?

Ans. Cover the tree and put the strapping on it; that is all the instruction I got.

X Int. 68. Any instruction about the quality or color of the leather?

Ans. The style or number would tell me what to do about that.

X Int. 69. What number was given to you as a guide for making up this exhibit?

Ans. I think it was "407 Park."

X Int. 70. Is Respondents' Exhibit Park Saddle the No. 407 Park saddle, after the style of which you were instructed to make up the Exhibit Slotted Granger Saddle?

Ans. Yes, sir.

235 X Int. 71. Was it because you were instructed to make the Exhibit Slotted Granger Saddle after the style of No. 407 Park saddle that you made the slotted Granger saddle with an open seat instead of a closed seat?

Ans. 407 calls for an open seat.

X Int. 72. By what name were the saddles which you made on what you have designated in your direct testimony as Jenifer trees known and sold in the market?

Ans. Jenifer saddle.

X Int. 73. Did they have any additional name as "Military" Jenifer?

Ans. Not to my knowledge.

X Int. 74. Will you state how the saddle-trees with which you were acquainted prior to 1876, and on which you made the Jenifer saddles, compared in shape with Respondents' Exhibit Jenifer-McClellan Tree now shown you, and point out any differences you may see.

Ans. This I call the Jenifer tree. All the difference I can say is the cantle of the Jenifer tree might have set a little straighter and a little broader.

X Int. 75. I show you another saddle-tree and ask you to direct your attention to the cantle of that tree alone, and to state whether the cantles upon the Jenifer saddles that you made prior to 1876 did not more nearly resemble the cantle upon the tree just handed you than they did the cantle upon Respondents' Exhibit Jenifer-McClellan Tree.

Ans. No; they did not.

(Saddle-tree handed witness in connection with the last question is marked for identification Y, H. E. T., ex.)

X Int. 76. You stated on your direct examination that Respondents' Exhibit Slotted Granger Saddle with Jenifer Cantle was made on a tree like Respondents' Exhibit Sullivan Black Granger Tree with Jenifer cantle attached. Please look at these two exhibits and see whether you were not mistaken in that answer.

Ans. I call one Granger with round cantle and the other the Granger with Jenifer cantle.

X Int. 77. You recognize, do you not, that there is a difference in the size of the trees of the two exhibits?

236 Ans. Yes.

X Int. 78. And do you mean to say that the only difference which you perceive is a difference in size, while the relative or proportionate shape of each is the same?

Ans. The same according to the two trees and the size of the two trees.

X Int. 79. Is what you have called the Jenifer cantle upon Respondents' Exhibit Slotted Granger Saddle with Jenifer cantle more nearly like the cantle upon Respondents' Exhibit Jenifer-McClellan Tree than it is like the cantle upon Respondents' Exhibit Whitman Saddle, taking into account both the shapes and positions of the cantles upon *upon* the bars in the several exhibits?

Ans. I shall have to compare them. I have never compared them. (Witness compares them and continues his answer.) It is.

X Int. 80. I hand you another saddle-tree. What style of tree would you call that?

Ans. I have no doubt but what it has been made for a Jenifer tree.

X Int. 81. Do you call it a fair sample of a Jenifer tree?

Ans. No, sir.

X Int. 82. What criticism do you make to it in respect to your last answer?

Ans. It is not as well made and is generally not as well shaped a tree as the original Jenifers were.

(Complainant's counsel asks that tree last shown the witness be marked for identification W, H. E. T., ex., and the same is so marked.)

X Int. 83. Can you tell after a lapse of ten or twelve years whether the Jenifer saddles which you made prior to 1876 were made upon trees which in their shape more nearly resemble the tree just marked for identification W, or Respondents' Exhibit Jenifer McClellan Tree? I refer now to the shape of the tree without any regard to its quality of construction.

Ans. In some respects this tree marked W for identification is more nearly like the original Jenifer.

X Int. 84. State in what respects.

Ans. In the pommel being set back further from the end

237 of the bars and the cantle being set further forward from the rear end of the bars.

Adjourned to Friday, July 8, 1887, at 9 a. m.

FRIDAY, *July 8th*, 1887—9 a. m.

Met pursuant to adjournment.

Present: Same parties.

Cross-examination of WILLIAM T. GOODSELL continued:

X Int. 85. Are not Respondents' Exhibits Muley Slotted Saddle and Kilgour Slotted Saddle made up after the style of No. 407, as you testified that Respondents' Exhibit Granger Slotted Saddle with Jenifer Cantle was made?

Ans. Yes; they are made in the same style.

X Int. 86. Can you tell how many style numbers of saddles Smith, Bourn and Company have?

Ans. Well, we'll say a hundred or a hundred and fifty.

X Int. 87. And do each of these numbers represent or stand for distinct styles of saddles?

Ans. Yes, sir.

X Int. 88. Will you give the names of the workmen who finished up these saddles under your supervision? I mean all of the respondents' exhibits that you have referred to in your direct examination.

Ans. William Hill.

X Int. 89. Mr. Hill did all the work, did he?

Ans. Yes.

Cross-examination closed.

Redirect examination by Mr. SIMONDS:

R. D. Int. 90. Are Smith, Bourn & Co. tree makers?

Ans. No, sir.

R. D. Int. 91. Prior to 1876, were or were not trees same as Respondents' Exhibit Muley Tree and Respondents' Exhibit Kilgour Tree simply covered with rawhide, with the central slot left open and uncovered, and thus used as saddles?

238 Ans. They were.

R. D. Int. 92. Where were you living at the time you had such knowledge?

Ans. Newark, New Jersey.

R. D. Int. 93. Was this done only in a few instances or in many instances?

Ans. Many instances.

R. D. Int. 94. I call your attention to Complainant's Identification Exhibit Y, H. E. T., ex. Do you find the following to be true of it: The body is apparently an old one and covered with canvas. The whole of the original cantle has evidently been removed and a new one recently made of white wood or the like and substituted therefor. Behind the present cantle there is on top of the bars a space uncovered by canvass, apparently formerly covered by the

original cantle, which space is approximately three-fourths of an inch wide next the central slot in the saddle?

(Complainant's counsel says he will admit all the leading statements in the question.)

Ans. I do.

R. D. Int. 95. Will you trace out the line of the Condict firms you have mentioned?

Ans. Condict & Horton, in 1852, the time I went there. In 1859 it was S. H. Condict. I staid there from 1852 to 1859. In 1862 it was J. Elliot Condict & Company. In the interval of 1861 I was away from the concern seven months. I think it was in 1865, as near as I can get to it, it became S. H. Condict again. In the interval between 1861 and 1865 I was out of the employment of J. Elliot Condict for about two years. During that two years I was the inspector of horse equipments for the United States Government. In the fall of 1865 I returned to the employ of J. Elliot Condict, and that was about the time the firm changed from J. Elliott Condict to S. H. Condict. I remained in their employ then until 1872. I then left the employ of S. H. Condict. The next time I went into the employ of the concern was in 1881 or 1882. I cannot place it positively. The concern then was F. K. Condict. I remained there until October, 1885.

R. D. Int. 96. As to what you call the Jenifer saddles,
239 known to you prior to 1876, were they or not made up and sold with the central slot uncovered and open?

Ans. Yes, sir; they were.

(Examination closed.)

WM. T. GOODSELL.

Subscribed and sworn to this 8th day of July, A. D. 1887, before me—

HENRY E. TAINTOR, *Examiner.*

EDWIN H. WELLS, witness on the part of the respondents, produced and duly sworn, in answer to interrogatories proposed to him by Wm. E. Simonds., Esq., testifies as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Edwin H. Wells; my age is 66 years; my residence is Bridgeport, Conn., and my occupation is a saddler.

Int. 2. How long have you been connected with the saddlery business?

Ans. I went to my trade in 1835. I was out at different times, in the whole not over three years at the outside, to the present time.

Int. 3. Prior to 1876, of how many different styles of saddles did you know in public and common use in this country?

Ans. I could not give the number definitely. It would run up into the hundreds, though.

Int. 4. Prior to 1870, was it or was it not the custom of makers of saddle- and saddle-trees to alter the shape and appearance of saddles to suit the tastes of customers?

Ans. It was.

Int. 5. How frequently should you say you did that prior to 1876?

Ans. Well, very frequently.

Int. 6. By what name or names have you known the kind of cantles on the saddle which I show you (saddle shown to witness)?

Ans. The Hussar, and the Jenifer, and one other cantle. I have really forgotten the name.

240 (Saddle shown witness is offered in evidence and marked "Respondents' Exhibit Jenifer-McClellan Saddle, H. E. T., ex.")

(Introduction of saddles in evidence objected to as immaterial and incompetent so far as at present disclosed.)

Int. 7. Prior to 1876 how many different styles of saddles in public and common use in this country did you know of having the kind of cantle which is on this saddle which we call Respondents' Exhibit Jenifer-McClellan Saddle?

Ans. There is only three that I have known. Of course, we make a different kind of saddle on the same tree; that runs into I can't tell how many—quite a number.

Int. 8. Where were you in the saddle business at the time you knew of these three prior to 1876?

Ans. Bridgeport, Connecticut.

Int. 9. Of how many different styles of saddles in public and common use in this country prior to 1876 did you know that had the central slot left open, as in Respondents' Exhibit Jenifer-McClellan Saddle?

Ans. I could not give the definite number; there were quite a lot. I should say five or six.

Int. 10. Name such of them as you can remember.

Ans. The McClellan, the Shackelford, the Jenifer—two styles of Jenifers—the Princess, and the Morgan tree. Those I recollect.

Int. 11. Prior to 1876 did you know of the Kilgour and Muley saddles?

Ans. Yes.

Int. 12. How did the trees of those Kilgour and Muley saddles correspond with or differ from Respondents' Exhibit Kilgour Tree and Respondents' Exhibit Muley Tree?

(Question objected to as being immaterial, the essential point being what was the shape of the saddles that witness had knowledge of and not what was the shape of the trees, as witness has already stated that it was customary to make different styles of saddles upon the same trees.)

Ans. I should think they were nearly the same thing; as nearly as two different manufacturers attempt to make the same thing.

Int. 13. Prior to 1876 and to your knowledge were or were
241 not such Kilgour and Muley trees as you have testified to covered with rawhide, with a central slot left open, and in that condition sold and used as saddles?

Ans. The Muley-Morgan was. To my own knowledge I do not know that the Kilgour was.

Int. 14. How did that Muley-Morgan tree differ, if at all, from Respondents' Exhibit Muley tree?

Ans. It was a very similar tree—like it, I should say. Cover that tree with hide and it will look some different from what it does now when you come down to fine points.

Int. 15. While you were in business at Bridgeport, prior to 1876, did you or not know of saddles in public and common use the same as Respondents' Exhibit Muley Saddle and Respondents' Exhibit Kilgour Saddle? Never mind the trappings.

Ans. The Muley, not the Kilgour. We never made it in this style.

Int. 16. How did you make the Kilgour prior to 1876?

Ans. We made it with full seats; not an open seat.

Int. 17. While you were in business in Bridgeport, prior to 1876, did you or did you not know of saddles in public use and on sale in this country the same as Respondents' Exhibit Jenifer-McClellan Saddle? Never mind the trappings.

Ans. Very nearly the same thing.

Int. 18. Did you have an interview with Royal E. Whitman, the patentee in complainant's patent in suit, in which there was a conversation between you and him which had reference to the so-called Whitman saddle; also to the style of saddle which you say was very nearly the same thing as Respondents' Exhibit Jenifer-McClellan Saddle?

Ans. I did.

Int. 19. Where was that interview?

Ans. At his office, in New York city.

Int. 20. State in substance, at least, what occurred and what was said about these two styles of saddles.

Ans. I was taken there by Mr. Morrison to see the new tree, and I remarked to Colonel Whitman that he had got the cantle of the Military Jenifer saddle; that was all.

242 Int. 21. Was that the first time you had seen the so-called Whitman saddle?

Ans. I think it was. I am not positive about that. It was when the Whitman trees were first introduced.

Int. 22. Were the Jenifer saddles that you knew at Bridgeport prior to 1876 made up with the central slot open and uncovered?

Ans. They were.

Int. 23. In covering a tree with leather or hide to make it into a saddle does or does not the covering, as a rule, conform closely to the tree?

Ans. With leather it does; with hide not as close.

Direct examination closed.

Cross-examination by R. H. DUNCAN, Esq.:

X Int. 24. Was Mr. Morrison, who went with you to Col. Whitman's office at the time of the interview you have spoken of, a

member of the firm of Miller, Morrison & Company, of New York city?

Ans. He was.

X Int. 25. Were you a member of that firm at that time?

Ans. I was.

X Int. 26. That firm manufactured and sold the Whitman saddles under the license and consent of Col. Whitman, did they not?

(Objected to as immaterial and irrelevant.)

Ans. I really don't recollect of any particular license. We made saddles for him and also sold in New York. If there was a specific agreement it would have been known to the New York house and not to me.

X Int. 27. Did you not understand that the Whitman saddles which the firm sold were sold by the consent or agreement of Mr. Whitman to your firm?

(Same objection.)

Ans. About a special agreement I do not know anything. I was a member of the firm, but was in the factory, and I never
243 have known of their special agreements. I have manufactured whatever they have sent to me to manufacture.

X Int. 28. You manufactured the Whitman saddles for Colonel Whitman and for your firm at Bridgeport, Conn., did you not?

Ans. Yes.

X Int. 29. And for how long did you do so?

Ans. I could not give the time.

X Int. 30. Won't you fix it as near as you can from recollection?

Ans. I have manufactured the Whitman saddle right along up to within two or three years, and I cannot separate when I stopped manufacturing them for Col. Whitman.

X Int. 31. Who furnished the trees on which those saddles were manufactured?

Ans. We got them of Col. Whitman and of the present company, the Whitman Saddle Company.

X Int. 32. At the time you had the interview with Col. Whitman to which you have referred had your firm begun to make the Whitman saddles?

Ans. I don't think we had.

X Int. 33. When you said to Col. Whitman, as you have stated, that he had got the cantle of the Military Jenifer saddle what reply did he make, if any?

Ans. His reply was that he thought I was mistaken about the similarity. We had quite a little discussion on the point, I recollect, at the time.

X Int. 34. Did you claim that the Whitman saddle taken as a whole looked any like the Jenifer saddle taken as a whole?

Ans. That is the ground I took—that there is a very striking resemblance.

X Int. 35. Did you have a Jenifer saddle present at that interview?

Ans. I did not.

X Int. 36. Look at Respondents' Exhibit Jenifer-McClellan saddle and state whether you regard that saddle as a distinct style of saddle from the Whitman saddles that you have made.

(Objected to as not germane to the direct examination.)

Ans. I hardly know how to answer that question. We make between three and four hundred styles of saddles, and to come
244 right down to it to say that is a distinct — only in the sense that these three or four hundred styles are distinct I should readily know that that (pointing at Respondents' Exhibit Jenifer-McClellan Saddle) is not the regular Whitman saddle. I can say that.

X Int. 37. State whether prior to 1878 you ever saw a Muley saddle or a Muley-Morgan saddle made up after the style of Respondents' Exhibit Slotted Muley Saddle—that is, I mean covered in black leather in skeleton style.

Ans. I would not say that I had seen exactly that style. I would say that an open seat, to my recollection, has been made ever since the war.

X Int. 38. Did you see them covered in black leather previous to 1878?

(Objected to — immaterial.)

Ans. My recollection of that—of course we have covered saddles with russet and black, and don't know of any time when we did not cover with black equal with russet.

X Int. 39. But you don't recollect, as I understand, specifically whether the Muley or the Muley-Morgans were covered with black prior to 1878?

Ans. I would not say positively they had been.

X Int. 40. The Kilgour saddles which you knew prior to 1876, I understand you to have testified, were made with closed seats instead of the open seat, as shown in Respondents' Exhibit Slotted Kilgour Saddle. Did that continue to be the case up to the present time, so far as you know?

Ans. With our manufactory we have never manufactured them other that with the closed seats. I do not now recollect of seeing one manufactured without closed seat.

X Int. 41. In making saddles upon a Spanish or a wooden tree does it not make a great difference in the appearance of the finished saddle how the tree is covered, whether with a closed seat over a slotted tree or an open seat, and whether padding or quilting is used in connection with the covering and finishing?

(Objected to as not germane to the direct examination.)

Ans. Why, certainly.

Cross-examination closed.

245 Redirect by Mr. SIMONDS:

R. D. Int. 42. I show you a saddle or a saddle-tree, as you may choose to call it. How did the hide-covered Muley or Muley-Morgan trees which were made at your concern at Bridgeport prior to 1876 and sold for use as saddles without other covering correspond with or differ from the saddle which I show you?

(Same shown to witness.)

Ans. This is a fair Muley saddle-tree about as they make them.

R. D. Int. 43. And is it about as you made and sold them prior to 1876 at Bridgeport?

Ans. Yes.

R. D. Int. 44. And were they used as saddles without other covering?

Ans. Yes.

R. D. Int. 45. As a rule, when trees are covered with hide, does or not the hide conform to the tree the same as in this saddle or saddle-tree I have just shown you?

Ans. It does.

R. D. Int. 46. And in covering with leather is the conformation rather more close?

Ans. It is more certain to be so. This hide is put on when it is a green hide, and in the drying it does not dry out even.

(Saddle last shown witness is offered in evidence by respondents' counsel and marked "Respondents' Exhibit Hide-Covered Muley Tree, H. E. T., ex.")

Examination closed.

EDWIN H. WELLS.

Subscribed and sworn to this 8th day of July, 1887, before me—
HENRY E. TAINTOR, *Examiner.*

246 BENJAMIN A. BOURN, witness on the part of the respondents, produced and duly sworn, in answer to interrogatories proposed to him by WM. E. SIMONDS, Esq., testifies as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Benjamin A. Bourn. My age is 60 years. My residence is Hartford, Conn., and am a saddler by trade and a member of the firm of Smith, Bourn & Co.

Int. 2. Have Smith, Bourn & Co. any pecuniary interest in the event of this suit?

Ans. We have some pecuniary interest, and then again we have not.

Int. 3. Has the J. S. Sullivan Saddle-Tree Company of Jefferson City, Missouri, to pay all costs and damages to Smith, Bourn & Co. in case the Whitman Saddle Company prevails in this suit?

(Objected to as being incompetent on the ground that the witness states that the agreement is in writing.)

Ans. Yes, sir; I will say this much: we have a pecuniary interest in the future if they prevail, because if they prevail all trees in future would be made under designs or patents.

Int. 4. How long have you been connected with the saddle business?

Ans. All my life.

Int. 5. Prior to 1876 of how many different styles of saddles or saddle-trees did you know in public and common use in this country?

Ans. A good many hundreds.

Int. 6. Has your connection with the saddle business always been at Hartford, Conn.?

Ans. With the exception of two or three years—a year in Mount Morris, New York, and a year in Brooklyn, New York.

Int. 7. What, if you know, are the three photographs which are each marked "Respondents' Exhibit Smith, Bourn & Co.'s Trees"?

Ans. They are photographs which we had taken of trees taken from our stock and, perhaps, a few of them trees borrowed to be photographed.

Int. 8. During all your connection with the saddle business has it or not been customary for makers of saddle-trees and saddles
247 to alter the shape and appearance of trees and saddles to suit the taste of customers?

Ans. It has, and also to fit the horses.

Int. 9. By what name do you know the shape of cantle that is on Respondents' Exhibit Whitman Saddle?

Ans. The Jenifer cantle; also as the Hussar cantle.

Int. 10. Prior to 1876, and speaking within your own knowledge, on what different styles of saddles in public and common use in this country were such Jenifer cantles used?

Ans. They were used on the Hussar saddles, used on the Jenifer saddles, used on the Grimsley saddle, and also could be ordered on any tree we wanted.

(Last clause of answer objected to as in no respect relating to facts.)

Int. 11. How far back does such use of the Jenifer cantle extend?

Ans. To 1864 or 1865.

Int. 12. Prior to 1876, and speaking within your own knowledge, how many different styles of saddles in public and common use in this country had central open slot, as in Respondents' Exhibit Whitman Saddle?

Ans. We have made the Kilgours saddle with open slot. We made Shackelford saddle with open slot. We made the McClellan saddle with open slot. We made the Princess and the Muley-Morgan.

Int. 13. How did those Muley-Morgan saddles with open slots of a date prior to 1876 correspond with or differ from Respondents' Exhibit Slotted Muley Saddle?

Ans. No material difference; not covered with leather principally.

Int. 14. What were they covered with?

Ans. Muley-Morgans, with hide.

Int. 15. How did your Kilgour saddles of a date prior to 1876

correspond with or differ from Respondents' Exhibit Slotted Kilgour Saddle?

Ans. They were covered with leather in the same way, with open slot, and various patterns of trees called under the head of Kilgour.

Int. 16. Was or was not the pattern of Respondents' Exhibit Slotted Kilgour Saddle in common manufacture and sold by you at Hartford, Conn., prior to 1876?

Ans. Of similar make it was.

248 Int. 17. Were the Princess, Shackelford, and McClellan saddles mentioned in your answer to 12th interrogatory covered with leather?

Ans. Yes, sir.

Int. 18. Have you in the past made and sold regularly in your trade saddles the same as Respondents' Exhibit Jenifer-McClellan Saddle? Never mind the trappings.

Ans. Yes, sir.

Int. 19. How far back?

Ans. 1868.

Int. 20. Have you regularly made and sold them ever since?

Ans. When called for and ordered. There is no great sale.

Int. 21. Is it or not the rule that in covering a tree with leather (excepting possibly padding underneath for the horse's back) that the leather conforms to the tree?

Ans. It is.

Int. 22. And in such case are or not the tree and saddle of substantially the same shape and appearance?

Ans. They are.

Int. 23. How is it in this regard when covering with hide?

Ans. Not so close.

Int. 24. Does or does not Respondents' Exhibit Hide-Covered Muley Tree illustrate the closeness of conformation between tree and covering that is attained as a rule in covering with hide?

Ans. It does.

Int. 25. How does the tree of Respondents' Exhibit Hide-Covered Muley Tree compare in size, shape, and appearance with Respondents' Exhibit Muley Tree?

Ans. About the same.

Int. 26. Of whom did Smith, Bourn & Company purchase the trees that are in the saddles complained of as infringements, provided those saddles are of your manufacture?

Ans. The J. S. Sullivan Saddle-Tree Company.

Int. 27. By what name do you know such trees?

Ans. The Park tree.

Int. 28. How many such Park trees have you ever bought?

Ans. Thirty-six. We have used twenty-one; the balance are on hand.

249 Int. 29. Have you ever sold as a Whitman saddle any saddle not built upon a tree purchased from the Whitman Saddle Company or its predecessor?

Ans. Never.

Int. 30. Is the Whitman saddle, so called, superior in beauty,

strength, or utility to saddles in common use in this country prior to 1876?

Ans. Not that I am aware of.

Int. 31. On what kind of a tree is Respondents' Exhibit Whitman Saddle built? Whose make is it?

Ans. On a Whitman tree purchased from the Whitman Saddle Company.

Int. 32. Who purchased that tree from the Whitman Saddle Company?

Ans. Either Smith, Worthington & Company, our New York house, or Smith, Bourn & Company.

Int. 33. Did it bear a label as being patented under complainant's patent in suit?

Ans. It did.

Int. 34. Who covered that tree?

Ans. Mr. William Hill, one of our workmen.

Int. 35. What change, if any, was made in the tree after it was bought of the Whitman Saddle Company and before it was covered?

Ans. It was—I think Mr. Hill had better answer that question.

Int. 36. How early did you know of the Granger saddle?

Ans. Not personally under that name did I know it until I saw it in the published books of the J. S. Sullivan Saddle-Tree Company and Hatheral & Park some five or six years ago.

Direct examination closed.

Cross-examination by Mr. DUNCAN:

X Int. 37. Look at Complainant's Exhibits A and C and state whether you can or cannot tell whether or not your firm made those two saddles.

Ans. I cannot tell definitely.

X Int. 38. Have you shown said saddles to any of your workmen and asked them whether or not they made or assisted to make those saddles or any part of them?

250 Ans. I have. Some think they were made and some that they were not made by Smith, Bourn & Co.

X Int. 39. Do you see any difference between the two saddles that would determine to your mind that one of them was made by your firm while the other might not be; and, if so, what is the difference?

Ans. I don't see any difference in the make of the saddles.

X Int. 40. When did Smith, Bourn & Co. first begin to buy the Whitman trees and make and sell the Whitman saddle?

(Objected to as immaterial and irrelevant.)

Ans. I don't recollect the date exactly. We bought and used them when Col. Whitman was manager there.

X Int. 41. Up to what date did you continue to buy the Whitman trees of Colonel Whitman and the Whitman Saddle Company?

(Same objection.)

Ans. Until they stopped selling; I cannot give the year; until we received notice that they would not sell us.

X Int. 42. Please look at printed circular now shown you and state if that contains the notice to which you refer.

Ans. It probably is; though I could not say.

(Circular offered in evidence and marked "Complainant's Exhibit Whitman Saddle Company's Notice, dated January 1, 1886, H. E. T., ex.")

X Int. 43. State why your firm bought Whitman saddle-trees of Colonel Whitman and the Whitman Saddle Company and made Whitman saddles thereon and sold the same.

Ans. To make money; same as any other saddle-tree.

X Int. 44. Why did you not make your saddles upon trees of some different shape from the Whitman tree and which you could obtain for less money?

Ans. We did make saddles on trees for less money. The Whitman tree is only one out of a good many trees that we use.

X Int. 45. I mean why did you use any Whitman trees, and why did you not make all of your saddles upon trees of different shapes from the Whitman trees?

251 Ans. Because we were judges of our own business and made such saddles as we thought we could make money out of.

X Int. 46. Did you not pay to the Whitman Saddle Company and Col. Whitman a higher price for their trees than you were paying for any other saddle-trees during the time you were making Whitman saddles?

(Objected to as immaterial and irrelevant.)

Ans. No, sir.

X Int. 47. What did you pay for the Whitman trees during that time?

(Same objection.)

Ans. Thirty or thirty-six dollars per dozen.

X Int. 48. What were you paying per dozen each for the Muley-Morgan, the Kilgour, the Shackelford, the Princess, and the McClellan during the time that you were making the Whitman saddle?

(Same objection.)

Ans. From eight to fifteen dollars on the Morgan per dozen; McClellans, eight to twenty-four dollars per dozen; Kilgour, twelve to twenty dollars per dozen; the Shackelford and Princess about the same, to the best of my recollection. For the Shaftoe trees we paid forty-eight dollars per dozen.

X Int. 49. The Shaftoe saddle was an English upholstered saddle, was it not?

Ans. It was, and came in competition with the Whitman.

X Int. 50. By your last answer do you mean that it had the Whitman design?

Ans. No; I mean it entered into competition in selling.

X Int. 51. What is the price of this Shaftoe saddle in the market by retail?

Ans. We made a great many grades, and they varied in price from twenty dollars to sixty.

X Int. 52. When you made those saddles on trees that you paid forty-eight dollars per dozen for the trees about what was their retail price?

Ans. From fifty to sixty dollars.

X Int. 53. Don't you know which of the firms—Smith,
252 Worthington & Co. or Smith, Bourn & Co.—purchased of the Whitman Saddle Company the tree upon which Respondents' Exhibit Whitman Saddle was made?

Ans. No; I cannot tell. Both firms purchased trees.

X Int. 54. Can you give any approximate date when the said tree was obtained from the Whitman Saddle Company?

Ans. I cannot, because it was taken from our stock garret where stock was continually being put in and taken out, and there may be one tree of an old lot and one tree of a new lot.

X Int. 55. When was the Respondents' Exhibit Whitman Saddle made—that is, when was the tree covered with leather?

Ans. I think it was two or three years ago.

X Int. 56. What changes or repairs have been made upon the saddle since it was made up two or three years ago?

Ans. The back of the pommel has been cut down to make it conform to the reading of the patent; the hogskin was cut open on the upper edge of the bar. That is all the change from the original tree. This change was made to conform to the patent as we read the patent.

X Int. 57. Did you personally determine that the tree should be changed in the way you have described or did you leave that to the judgment of some other person; and, if the latter, who?

Ans. All the exhibits were made at the request of Mr. Simonds, our attorney.

X Int. 58. Did he tell you what changes to have made in this Whitman tree?

Ans. Yes, sir.

X Int. 59. And you made them to conform to his directions?

Ans. Yes, sir.

X Int. 60. When did you first receive what is known as a Park tree from the Sullivan Saddle-Tree Company?

Ans. I think in 1886, although I cannot say definitely. I have not the date here. I think it was; I cannot be certain.

X Int. 61. Were the sample or samples of Park trees which were first sent to you satisfactory or not?

(Objected to as immaterial and irrelevant.)

Ans. They were not.

253 X Int. 62. Did you so inform the said Sullivan Company and request them to make certain changes in them?

(Same objection.)

Ans. I cannot say.

X Int. 63. Did you or any person to your knowledge tell the Sullivan Company that you wanted those Park trees made like the Whitman trees or did you or any one to your knowledge send them a Whitman tree for sample?

(Same objection.)

Ans. I think we sent them a Whitman tree after the receipt of their sample tree and at their request.

X Int. 64. After that did they make any changes in their Park trees and were such changed trees satisfactory to you?

(Same objection.)

Ans. Yes; there were changes and they were satisfactory.

X Int. 65. Can you produce a Morgan-Muley tree or saddle, or a Kilgour tree or saddle, or a McClellan tree or saddle, or a Jenifer tree or saddle, or a McClellan-Jenifer tree or saddle, which you can testify was made prior to the year 1876?

Ans. Nothing on hand of that kind at the present time. Trees go out of fashion.

X Int. 66. You said that you had made saddles very similar to Respondents' Exhibit Jenifer-McClellan Saddle and began making them as early as 1868. Please state who made the trees for such saddles.

Ans. Well, I don't know as I can state who made those trees at that time. Could not state.

X Int. 67. Couldn't you find out?

Ans. I think Mr. Ambler, of Huntington, Conn., made them at that time. It is just back of Bridgeport and I think in the town of Huntington. I do not remember his first name.

X Int. 68. Who made Respondents' Exhibit Jenifer-McClellan Saddle and where was the tree of such saddle obtained?

Ans. The saddle was made in our factory and the tree was obtained from Joseph Bevan, of Newark, New Jersey, within a few months.

Cross-examination closed.

254 Redirect examination by Mr. SIMONDS:

R. D. Int. 69. How many of any one style of saddle have you sold in the seven years last past?

Ans. Of the Morgan varieties, what we would class under that head, about twelve thousand; McClellan, about six thousand; English saddles, about nine thousand three hundred; side saddles, about sixty-five hundred.

R. D. Int. 70. Have you any idea how many saddles of the Whitman make you have sold in the same time?

Ans. Very small, comparatively; I don't know exactly.

R. D. Int. 71. How many of the trees shown in Respondents' Exhibit Smith, Bourn & Co.'s Trees were in use prior to the year 1878?

Ans. Nearly all of them, with one or two exceptions, perhaps.

R. D. Int. 72. Where did this leaf of pictures of saddles that I show you come from?

(Same shown to witness.)

Ans. It came from a sample book from which our travelers sold the saddles.

R. D. Int. 73. How long have those pictures been in existence, to your knowledge?

(Objected to as immaterial.)

Ans. Since 1856 to 1858.

R. D. Int. 74. Have they been used ever since to sell saddles from?

Ans. No; they have not. They were used for some years after that date, but now miniature saddles are made.

(Leaf of pictures offered in evidence and marked "Respondents' Exhibit Sample Book Leaf, H. E. T., ex.")

R. D. Int. 75. From 1858 and some years afterward did you make and sell saddles such as shown at the upper left-hand corner of Respondents' Exhibit Sample Book Leaf?

Ans. We did. These are exact copies in color of leather and all of saddles that we made and sold at that date.

255 R. D. Int. 76. What was the shape of the lower line of that saddle No. 173 at the upper left-hand corner of Respondents' Exhibit Sample Book Leaf?

Ans. I cannot tell at this date the exact lines of that saddle.

Redirect examination closed.

Recross-examination by Mr. DUNCAN:

R. X Int. 77. You do not pretend, do you, that respondents' three exhibits Smith, Bourn & Co.'s trees are photographs taken from the identical trees which existed prior to 1876?

Ans. Not all of them. A great many existed previous to that date, but the fashion or shape generally of those trees were in existence previous to 1876.

R. X Int. 78. Is it not true that some of the trees which were photographed to make up these exhibits have been made since 1880?

Ans. I told you in a previous answer that some of these trees were made previous to 1878, and that the shape and fashion of the balance were also in use previous to 1878; but some of the trees have been made since 1880.

R. X Int. 79. Where did you get the tree on which Respondents' Exhibit Slotted Granger Saddle with Jenifer Cantle was made and when?

Ans. The Sullivan Saddle-Tree Company, perhaps within four months. I do not know exactly.

R. X Int. 80. Did you get it for the purpose of use in this suit? Ans. We did.

(Examination closed.)

BENJAMIN A. BOURN.

Subscribed and sworn to this 8th day of July, A. D. 1887, before me—

HENRY E. TAINTOR, *Examiner.*

256 WILLIAM HILL, witness on behalf of the respondents, produced and duly sworn, in answer to interrogatories proposed to him by WM. E. SIMONDS, Esq., testifies as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is William Hill; my age is 57 years; my residence is Hartford, Connecticut, and my occupation is a saddler.

Int. 2. How long have you been connected with the making of saddles?

Ans. About forty-four years.

Int. 3. Prior to 1876 was it or not customary for makers of saddles and trees to alter the shape and appearance of saddles and trees to suit the taste of different customers?

Ans. It was.

Int. 4. Was this done rarely or frequently?

Ans. Often.

Int. 5. By what name do you know such a cantle as is on Respondents' Exhibit Whitman Saddle?

Ans. Military cantle.

Int. 6. Prior to 1876, and speaking within your own knowledge, how many different styles and kinds of saddles were in public and common use in this country which had such a military cantle?

Ans. I think I am restricted to two.

Int. 7. What were they?

Ans. The Artillery and the Jenifer. I might even add a third, for in the papers referring to the Jenifer patent Jenifer is referred to a similar saddle made by David Campbell, New York city, 1855.

(All after "Jenifer," in first line, objected to as not responsive.)

Int. 8. How far back did you know of the use of such cantles?

Ans. Of my own knowledge in 1862, during the war.

Int. 9. Prior to 1876, and speaking within your own knowledge, how many different kinds and styles of saddles were in public and common use in this country which had an open slot like Respondents' Exhibit Whitman Saddle and Respondents' Exhibit Jenifer-McClellan Saddle?

Ans. Three.

Int. 10. What were they?

Ans. Jenifer, Shackelford, Princess, and McClellan. There
257 are others that I am doubtful about the date. I am positive as to these four.

Int. 11. Prior to 1876 did you know anything about hide-covered

Muley trees same as Respondents' Exhibit Hide-Covered Muley Tree being sold for use as saddles without other covering?

Ans. No.

Int. 12. Or the Kilgour?

Ans. No.

Int. 13. Who covered the trees of Respondents' Exhibit Slotted Muley Saddle, Respondents' Exhibit Slotted Kilgour Saddle, Respondents' Exhibit Slotted Granger Saddle, Respondents' Exhibit Slotted Granger Saddle with Jenifer Cantle, Respondents' Exhibit Park Saddle, Respondents' Exhibit Jenifer-McClellan Saddle, and Respondents' Exhibit Whitman Saddle?

Ans. I did.

Int. 14. What kind of a tree is covered in Respondents' Exhibit Slotted Muley Saddle?

Ans. A common Muley tree, the same as Respondents' Exhibit Muley Tree.

Int. 15. What kind of a tree is covered in Respondents' Exhibit Slotted Kilgour Saddle?

Ans. An old-style Kilgour tree, same as Respondents' Exhibit Kilgour Tree.

Int. 16. What kind of a tree is covered in Respondents' Exhibit Jenifer-McClellan Saddle?

Ans. A Jenifer-McClellan tree, the same as Respondents' Exhibit Jenifer-McClellan Tree.

Int. 17. What do you call the saddle that we have marked Respondents' Exhibit Jenifer-McClellan Saddle?

Ans. Union McClellan, with a military cantle added.

Int. 18. How old is the Union McClellan saddle with the military cantle added, to your knowledge?

Ans. I cannot tell; I am not familiar with that form.

Int. 19. How old, to your knowledge, is the Union McClellan saddle without the peak on the cantle—that is, with a rounded cantle, the same or about the same as the cantle on Respondents' Exhibit Slotted Muley Saddle?

Ans. Since 1869.

258 Int. 20. What useful purpose is served by the central slots in saddles?

Ans. No serviceable use.

Int. 21. What kind of a tree is covered in Respondents' Exhibit Slotted Granger Saddle?

Ans. A Granger tree; same as Respondents' Exhibit Sullivan's Black Granger Tree.

Int. 22. What kind of a tree is covered in Respondents' Exhibit Park Saddle?

Ans. A Park tree; same as Respondents' Exhibit Park Tree.

Int. 23. What kind of a tree is covered in Respondents' Exhibit Slotted Granger Saddle with Jenifer Cantle?

Ans. A Granger tree, with a Jenifer cantle added.

Int. 24. With the exception of the added Jenifer cantle, is or is not the Granger tree mentioned in your last answer the same as Respondents' Exhibit Sullivan's Black Granger Tree?

Ans. It is.

Int. 25. What kind of a tree is covered in Respondents' Exhibit Whitman Saddle?

Ans. A Whitman tree.

Int. 26. Do you know whether the tree in Respondents' Exhibit Whitman Saddle is of the Whitman Saddle Company's make?

Ans. It is.

Int. 27. Did you formerly work for the Whitman Saddle Company?

Ans. Yes, sir.

Int. 28. How long?

Ans. I worked for them twice—first, I think, in 1880, for about, say, six months; afterwards about eighteen months, about two years ago. I left them about a year ago.

Int. 29. In the condition in which the tree that is in Respondents' Exhibit Whitman Saddle came from the Whitman Saddle Company, was it such a tree as the Whitman Saddle Company marks with the date of the design patent in suit?

Ans. Yes, sir.

Int. 30. What change did you make in that tree that is now covered in Respondents' Exhibit Whitman Saddle?

Ans. The alteration that I made was in the back of the
259 head and upper edge of the bar, so as to make it conform to a drawing of the Whitman patent that I received from Mr. Goodsell.

Int. 31. Is Respondents' Exhibit Enlarged Drawing from Whitman Patent in suit the drawing from which you worked?

Ans. It is. I could not make it conform exactly to the drawing for the reason that the depth of the tree that was given me was not so deep from head to point as in the drawing; nor could I make the seat line (the inner upper line of the bars) of the tree correspond exactly to the corresponding lines of the drawing, because the bars of the tree are a little wider and rise a little higher at about the center of the seat, than in the drawing.

Int. 32. Did you make the fall at the back of the pommel in Respondents' Exhibit Whitman Saddle the same as in the drawing?

Ans. Yes, sir.

Int. 33. In covering saddle-trees with leather, is it or not the rule (aside from any padding that may be used underneath) to have the leather come in contact with the tree throughout and thereby make the leather conform to the shape of the tree?

Ans. It is.

Int. 34. Does or does not Respondents' Exhibit Hide-Covered Muley Tree illustrate the closeness of contact between hide and tree, and correspondence in shape and conformation between hide and tree, that is the rule in covering trees with hide?

Ans. It does.

Int. 35. What kind of a tree do you take it is covered with hide in Respondents' Exhibit Hide-Covered Muley Tree?

Ans. A tree same as Respondents' Exhibit Muley Tree.

Int. 36. While you were working for the Whitman Saddle Com-

pany, did that company mark with the date of the design patent in suit here trees such as tree No. 5, at the top of page 7 in Respondents' Exhibit Whitman Catalogue No. 4?

(Objected to as irrelevant and immaterial.)

Ans. Yes, sir.

Int. 37. Did they mark with the date of the design patent in suit here saddles or the trees thereof such as style 71, at the top of page 18 in Respondents' Exhibit Whitman Catalogue No. 4?

(Same objection.)

260 Ans. Yes, sir.

Int. 38. Is that style, No. 71, a saddle with the central open slot or a closed seat?

(Same objection.)

Ans. Closed seat.

Int. 39. And were such saddles with closed seats marked with the date of the design patent in suit here by the Whitman Saddle Company?

(Same objection.)

Ans. Yes.

Direct examination closed.

Cross-examination by Mr. BUCK, president of complainant company:

X Int. 40. In making the saddle, Respondent's Exhibit Slotted Muley Saddle, which you have testified as having made and in covering it with black leather, as you did, from whom did you receive your instructions?

Ans. Mr. Goodsell.

X Int. 41. Did you receive instructions from any one else while making this saddle?

Ans. In general, Mr. Goodsell brought the saddles to me; sometimes they were brought without saying anything and sometimes Mr. Bourn brought the tree. It was an understood thing that I was to make them up in the style of Respondents' Exhibit Slotted Muley Saddle.

X Int. 42. Did you receive your instructions concerning any of these saddles to which you have testified and known as respondents' exhibits of varions names from any one else than Mr. Goodsell and Mr. Bourn?

Ans. No.

X Int. 43. Leaving out the saddle, Respondents' Exhibit Whitman Saddle, as originally made before the alterations, which of the six saddles did you make first?

Ans. I think I made Respondents' Exhibit Slotted Muley Saddle first.

261 X Int. 44. What instructions did you receive and from whom when about to make this saddle?

Ans. I think I have already testified that I received instructions from Mr. Goodsell to make it in conformity with this style of saddle (pointing to Respondents' Exhibit Slotted Muley Saddle).

X Int. 45. Was a saddle similar to this slotted Muley saddle shown you at the time?

Ans. No.

X Int. 46. Were instructions given you to make the slotted Muley saddle like a saddle not shown in your previous answers to have existed previously without any further descriptive words of explanation?

Ans. I knew how to make it, because a style similar to this is made by the Whitman Company.

X Int. 47. Were you instructed to make this slotted Muley saddle as near as you could like some saddle made by the Whitman Saddle Company; and, if so, what saddle?

Ans. The same question occurs of receiving instructions—that my instructions were in general.

X Int. 48. Letting my X Int. 47 apply to all the saddles you made now in evidence, what answer do you make?

Ans. I can't answer the question.

X Int. 49. Do you refuse to answer the question?

Ans. No.

X Int. 50. Will you give your reasons why you could not answer X Int. 48. in full?

Ans. The tree or saddle now has become a saddle of public use, manufactured and well known, and special instructions in regard to the making of the saddle is not necessary. It is sufficient to designate it by a number in the shop by which the saddle is known.

X Int. 51. Was any number mentioned to you by which to make these saddles?

Ans. No.

X Int. 52. Can you give concisely the instruction you received on making the first or any of these saddles which were made by you, stating by whom, if any one, such instructions were given?

Ans. I can't give you the instructions; I can't.

X Int. 53. Were you told to make them after the manner of what is known in your factory as style 407?

262 Ans. Yes.

X Int. 54. Were you told to use black leather or was black leather supplied you for the purpose without further directions?

Ans. It was supplied to me without further directions.

X Int. 55. Are all these saddles sewed nine to the inch?

Ans. Yes, sir.

X Int. 56. While with the Whitman Saddle Company were you in the habit of making what is known as their officers' saddle in black?

Ans. Yes.

X Int. 57. Can you tell me whether it is customary to make style No. 407 in Smith, Bourn & Co.'s factory exactly in the manner and

shape and with the same finish and as smoothly as the saddle marked Respondents' Exhibit Park Saddle?

(Objected to as immaterial and irrelevant.)

Ans. I must say yes; this is one of their saddles. I did not make this saddle, Respondents' Exhibit Park Saddle, and desire to modify my answer to interrogatory 13 to that effect.

Adjourned to Saturday, July 9th, 1887, at 10 o'clock a. m.

SATURDAY, *July 9th*, 1887—10 a. m.

Met pursuant to adjournment.

Present: Henry L. Buck, president of complainant corporation, and Wm. Edgar Simonds, counsel for respondent-.

Cross-examination of WILLIAM HILL continued:

X Int. 58. Will the examiner read to the witness X Ints. 47, 48, and 50 and answers, and will witness then state what tree or saddle he had in mind when he answered "The tree or saddle now has become a saddle of public use, &c."?

(Interrogatories and answers read to witness.)

Ans. The tree or saddle that I had in view was the tree or saddle as manufactured by the Whitman Saddle Company, and my
263 reasons for being unable to testify to former questions X 47 and X 48 referring to special instructions, my instructions were general and given partly by Mr. Bourn and Mr. Goodsell, with one exception in which my instructions were special. The special instruction was in regard to making Respondents' Exhibit Whitman Saddle. I received with that tree a drawing, with instruction to make it exactly in conformity with the drawing. To explain in a measure my own testimony I will state the circumstances. About one year ago I had a conversation with Mr. Bevans, of Newark, New Jersey. He at that time showed me the papers relating to the Whitman patent. On reading the description and comparing with the photograph of the patent I saw at once that the saddle-trees (complainant objects to this part of the answer as being matter of inference and for the court alone to determine) manufactured by the Whitman Saddle Company were not in accordance with the patent, and that the two saddles complained of was not an infringement of the Whitman patent, but that the saddles or tree was a variety of the Muley. Some time shortly after that I came to Smith, Bourn & Company's employment and about New Year, when a suit for injunction had been brought against Smith, Bourn & Co., I was called down to their office and was asked what I knew about the Whitman patent. I told them of the circumstances of my conversation with Mr. Bevans and what I knew in regard to the patent. Some time afterward, about New Year, I received a number of saddle-trees to cover so as to conform as nearly as may be to the saddle that was then made by the Whitman Company and, knowing these circumstances, it was not necessary to receive any general in-

struction. I made—I covered the trees the same as I would cover any other piece of work or saddle. I will further state that I never made but one Whitman saddle, except the one made for which I received special instructions and to which I refer—this saddle (pointing to Respondents' Exhibit Whitman Saddle).

(Complainant objects to the part of the above answer that is not responsive as irrelevant, incompetent, and immaterial.)

X Int. 59. In making up these saddles marked Respondents' Exhibits various names and excepting that marked Whitman Saddle were you paid for your labor by the piece, day, or week?

Ans. I was paid by the hour, the same as for any other piece of work, outside of piece-work.

264 X Int. 60. Is it customary in the factory of Smith, Bourn & Co. to pay for making regular styles of saddles by the hour?

Ans. No, sir.

X Int. 61. Can you state, then, why you were paid for making these saddles by the hour?

Ans. The saddles made, to which reference is made, is not a regular saddle.

X Int. 62. Do you mean that it is not a regularly listed style?

Ans. That expresses it.

X Int. 63. Did you ever cover a Muley tree before, exactly the same as the tree or saddle it is now, marked Respondents' Exhibit Slotted Muley Saddle?

Ans. No.

X Int. 64. In covering tree mentioned in previous question, what change did you make?

Ans. The changes made in the tree were the filling up by pieces of leather on each side of the strap or rigging, so as to make it flush on the face. The rigging being nailed or screwed, it is necessary to fill it up on the side to make it smooth and level.

X Int. 65. Did you make any change back of the pommel?

Ans. No.

X Int. 66. Did you make any change where the cantle joins the seat?

Ans. Yes.

X Int. 67. You have in a previous direct question (No. 33) stated that in covering saddle-trees with leather it is the rule to have the leather come in contact with the trees throughout and conform to the shape of the tree. Explain if you can the absence of this conformity behind the pommel in the saddle marked Respondents' Exhibit Slotted Muley Saddle and Respondents' Exhibit Slotted Muley Tree.

Ans. It is customary for the saddler in covering trees, when making a good saddle, to rasp off any inequalities of outline that he may perceive, and also to fill in with leather or sawdust or paste or cement, so as to make the general outline appear smooth—a practice that I have been accustomed to do with the Whitman saddle-trees or any other make or manufacture.

X Int. 68. Did you fill up the front of pommel next to rig-
265 ging straps and at juncture of cantle and seat in order to make saddle conform more closely to style No. 407 or did you have in mind when doing so some Whitman saddle?

Ans. No; I made the change in conformity with my previous answer, so as to make lines run smooth and true.

X Int. 69. Did you ever before make a saddle on a Kilgour tree like saddle marked Respondents' Exhibit Slotted Kilgour Saddle?

Ans. No, sir.

X Int. 70. Did you make changes in the Kilgour tree, used, when making saddle referred to in previous question, in the same general manner as when making up the Muley tree?

Ans. I made the same changes so as to make the general outline smooth and true.

X Int. 71. Were you in general or special terms instructed to make these saddles as smooth and true as possible?

Ans. I was not. It is my general practice to make all the work that I do as smooth and true as it is possible for me to do. I never slight my work.

X Int. 72. Excepting the individual saddles made by you and now marked Respondents' Exhibits Various Names, will you state what saddle-trees you have ever before covered in this close and smooth and skeleton manner?

Ans. Yes; the McClellan, the Jenifer, Boston Kilgour, and the saddle as manufactured by the Whitman Co. There are other saddles that are similarly made with jockeys, flaps, skirts; of course these are not close fitting to the tree. The question asked, I presume, means close fitting throughout like the Jenifer.

X Int. 73. How long have you known of the Park tree by that name to which you refer in your answer to direct interrogatory 22?

Ans. Since my employment by Smith, Bourn and Company.

X Int. 74. How long have you known the tree referred to as the Granger tree in direct interrogatory 23 from personal knowledge?

Ans. I have known the Granger tree for about ten years. I am doubtful if I did not know it in 1873.

X Int. 75. In what places or factories or stores did you see this Granger tree made up into saddles?

Ans. In Peters & Calhoun Co. It is a listed saddle of Peters & Calhoun Co., of Newark, New Jersey, from 1874 to 1878.

266 I have seen it, I think, in Hoblitzel & Constand's factory, St. Louis, the place where I worked. This is the doubt. I am not positive about that. It was prior to 1873.

X Int. 76. What style or appearance were these saddles?

Ans. Quilted, Somerset, English.

X Int. 77. Have you seen any of them in any other style previous to 1876?

Ans. They were sometimes made plain, not full quilted, but with knee and thigh puff.

X Int. 78. Was the seat always set or snowed?

Ans. Yes, sir.

X Int. 79. You have stated that you cut off some material back

of the pommel, thereby altering original shape of Respondents' Exhibit Whitman Saddle. Did you preserve such pieces?

Ans. I did not.

X Int. 80. Was the Granger tree with which you were acquainted from about 1873 to 1878 similar to the tree in the saddle marked Respondents' Exhibit Slotted Granger Saddle, or did it compare more closely with Respondents' Exhibit Straus-Granger Tree?

Ans. In my opinion it compares most nearly to Respondents' Exhibit Sullivan Black Granger Tree, but not exactly. At the point on the front end of the tree Respondents' Exhibit Sullivan Black Granger Tree, which I have notched with a knife, it ought to be about a quarter of an inch fuller, to the best of my knowledge and recollection.

X Int. 81. In making the change in Respondents' Exhibit Whitman Saddle referred to in X Int. 79, cutting away back of the pommel, did you cut to the same angle as shown in drawing Respondents' Exhibit Enlarged Drawing from Whitman Patent in Suit?

Ans. Please explain what is meant by the same angle—or to facilitate the matter I will explain what I did to the tree. Originally the longitudinal slot was about an inch and three-quarters throughout the slot circular behind the head. I then cut all away, so as to make the seat line conform straight to the line at the front of the cantle, and in perspective view I made the back of the head correspond to the enlarged drawing that was given me as near as I could.

X Int. 82. Will witness state from an inspection of the
267 drawing which way the line back of the pommel slopes or falls—whether perpendicular, towards the cantle, or towards the pommel?

(Objected to as incompetent.)

Ans. That will depend entirely upon the position in which you hold the drawing.

X Int. 83. I modify the previous question by adding the words "in relation to the other lines of the saddle or tree." With this modification, will you please answer?

(Same objection.)

Ans. From an inspection of the drawing, I would say the line was a perpendicular one.

X Int. 84. Will the witness answer the same question as applied to the saddle subsequent to its change, said saddle being marked Respondents' Exhibit Whitman Saddle?

(Same objection.)

Ans. The line as I see it in the saddle is perpendicular as near as may be.

Cross-examination closed.

Redirect examination by Mr. SIMONDS:

R. D. Int. 85. In altering the tree that is in Respondents' Exhibit

Whitman Saddle did you alter any part of the tree except to make the fall at the back of the pommel as it now is, and as a consequence lower the front part of the seat line?

Ans. I altered the seat line on the top of the bar, and I altered the central slot so as to make the seat line of the bar straight to the back end of the central slot, so as to make the tree and finished saddle what the finished saddle should be.

R. D. Int. 86. Did you cut down the top of the bars at all back of a point midway of the length of the seat?

Ans. Yes; about three-fourths of the length of the slot.

R. D. Int. 87. Throwing out of consideration what you did to the inner sides of the bars, did you, in altering the tree that is in Respondents' Exhibit Whitman Saddle, alter any part of the tree except to make the fall at the back of the pommel as it now is,
268 and consequently alter the seat line from a point about one-fourth of the length of the central slot from the rear end of that slot to the base of said fall, this last for the purpose of making the seat line symmetrical?

Ans. I made no other change, and the alteration in the seat line was for the purpose stated.

R. D. Int. 88. In the alterations which you did make in the tree last spoken of did you endeavor with care and accuracy to conform, so far as the alterations went, to Respondents' Exhibit Enlarged Drawing from Whitman Patent in Suit?

Ans. I did. I have already stated that I could not make it conform exactly on account of the difference already stated in the depth of the point.

R. D. Int. 89. At what did you work when employed by the Whitman Saddle Co.?

Ans. I might say general work, and in some cases chiefly on side saddles.

R. D. Int. 90. Was a part of your work in making what the officers and managers of that company call Whitman saddles marked with the date of the design patent in suit here?

Ans. Yes.

R. D. Int. 91. Then when you say that "I never made but one Whitman saddle except the one made for which I received special instructions and to which I refer, this saddle (pointing to Respondents' Exhibit Whitman saddle)," do you or do you not mean that, as you understand the design patent in suit here, the saddles made by the Whitman Saddle Company and marked with the date of said patent were not really made in accordance with said patent?

Ans. That is what I mean.

R. D. Int. 92. So far as design lines are concerned, do setting and snowing produce the same effect?

Ans. The same effect.

R. D. Int. 93. How many of the saddles on Respondents' Exhibit Sample Book Leaf are set or snowed?

Ans. I think they are all set or snowed from the appearance; five are quilted and the one in the lower left-hand corner is plain hog seat.

R. D. Int. 94. Were any of the Granger saddles that you knew from 1873 to 1878 made up with open seat—that is, with central slot left open?

269 Ans. Not that I know of.

Examination closed.

WILLIAM HILL.

Subscribed and sworn to this 9th day of July, 1887, before me—
HENRY E. TAINTOR, *Examiner.*

WILLIAM T. GOODSELL recalled, and examined by Mr. SIMONDS:

Respondents' counsel states that he withdraws his objections to cross-ints. 53, 56, 57, 58, 59, 60, 61, and 62 heretofore put to this witness.

R. D. Int. 97. As regards to Granger saddles which you testify that you know of prior to 1876, were they or were they not made up with the central slot left open?

(Objected to on the ground that witness has not shown any clear remembrance of the Granger saddle.)

Ans. My impression is they were left open..

R. D. Int. 98. Then how did they differ, if at all, in shape and appearance from Respondents' Exhibit Slotted Granger Saddle?

(Same objection.)

Ans. The great difference was in the mode of putting on the strappings.

R. D. Int. 99. Disregarding the mode of putting on the strapping, how did they differ, if at all, from Respondents' Exhibit Slotted Granger Saddle?

Ans. There was little or no difference.

R. D. Int. 100. In covering saddle-trees with leather, aside from padding or the like underneath, is it or not the rule that the leather conforms to the tree, except possibly slight filling where the tree has abrupt lines or breaks and so that the tree and the saddle have the same shape and appearance, except in such smoothness and finish as is due to the presence of the leather?

Ans. It is.

270 R. D. Int. 101. What kind of a tree is in Respondents' Exhibit Hide-Covered Muley Tree?

Ans. Supposed to be the same as the canvased, without the canvas.

R. D. Int. 102. The same as Respondents' Exhibit Muley Tree without the canvas?

Ans. Yes; without the canvas.

R. D. Int. 103. Does or not Respondents' Exhibit Hide-covered Muley Tree illustrate the closeness of conformation between tree and saddle that is the rule when trees are simply covered with hide?

Ans. I don't exactly understand that question.

R. D. Int. 104. When you take a tree like Respondents' Exhibit Muley Tree and cover it with hide, after the rule and fashion that is followed by the trade, do you or do you not get such a thing as Respondents' Exhibit Hide-Covered Muley Tree?

Ans. You do get just such a tree.

R. D. Int. 105. Does or not Respondents' Exhibit Hide-covered Muley Tree illustrate the closeness of conformation between tree and saddle that is the rule when trees are simply covered with hide?

Ans. It does.

Examination closed.

W. T. GOODSELL.

Subscribed and sworn to this 9th day of July, A. D. 1887, before me—

HENRY E. TAINTOR, *Examiner.*

CHARLES L. BURDETT, witness on behalf of the respondents, called and duly sworn, in answer to interrogatories proposed to him by WM. EDGAR SIMONDS, Esq., testifies as follows:

Int. —. What is your name, age, and residence?

Ans. My name is Charles L. Burdett; my age is 38 years; my residence is Hartford, Conn.

Int. 2. To what extent, if at all, have you been accustomed to riding on horseback and using saddles?

271 Ans. As a boy I rode at times, and in later years have ridden for pleasure, and for the last four years have ridden a horse as required by my duty in connection with the Connecticut national guard. For about eight days in each of the last four years at the encampment I have ridden a horse the greater part of each day, and at odd times during the year have used a saddle-horse for riding.

Int. 3. What is your office in the Connecticut national guard?

Ans. Major and engineer and signal officer.

Int. 4. By what name, if any, do you know the kind of cantle that is on Respondents' Exhibit Whitman Saddle?

Ans. As a Jenifer cantle.

Int. 5. Can you read and understand the drawing of Respondents' Exhibit Jenifer Patent of 1860, which I show you?

Ans. I can.

Int. 6. Does the drawing of the saddle in that patent show such Jenifer cantle?

Ans. It does, as near as I can make out the outline of the under side of the cantle (marked B) in the drawings in this patent No. 28867.

Int. 7. Has the saddle which is shown in the drawings of such Jenifer patent a central open slot substantially the same as in Respondents' Exhibit Whitman Saddle?.

Ans. It has. As I understand the drawings of this Jenifer patent the lower figure of the two figures of drawings clearly shows a length-

wise central opening through the saddle. The saddle shown in these drawings is evidently a finished saddle, as it is fitted with straps and pouches and a girth that passes over the top of the saddle and extends downward through slots in the flaps. The central slot evidently is represented in outline in the plan or top view of the saddle shown in the lower figure.

Int. 8. I show you a copy of the specification and photograph in R. A. Whitman's design patent for saddles, No. 10844, dated Sept. 24, 1878. Can you tell accurately from that specification and drawing the absolute or relative breadth of the saddle that is shown and described therein?

Ans. I have carefully examined the specification and the accompanying photographic picture, and can find no description that will enable me to ascertain the breadth of the saddle, nor does the photographic picture give a view of the saddle in plan view, either
272 looking from the top or bottom, from which a correct idea of the breadth of the saddle could be obtained; nor is the saddle or tree shown in end view or in crosswise section that would enable the breadth of the saddle on a certain plane to be ascertained.

Int. 9. Giving to the saddles, Complainant's Exhibit A, Complainant's Exhibit C, and Respondents' Exhibit Park Saddle, such careful examination as you can with the eye, and disregarding flaps, jockeys, and straps, can you detect any difference between the three saddles as to shape and configuration?

Ans. The flaps and jockeys on Exhibit A and Exhibit C make it difficult to obtain an impression of the lower lines of the saddles when viewed in profile from one side, but the lines of the seat and of the pommel and cantle in all three of the saddles enquired of produce on my mind the impression of identity as to shape and configuration in these parts. There is this difference, however, that strikes me, and that is the front line of the bar just below the pommel of Respondents' Exhibit Park Saddle seems to be a little fuller or more rounded out than in the other two exhibits inquired of.

Int. 10. If you had owned and ridden for three months, more or less, such a saddle as Complainant's Exhibits A and C and your saddle had been lost or stolen and you were to go to a saddler's to buy a new one like your old one (flaps, jockeys, and straps not now to be considered) would you or would you not at the saddler's take or mistake a saddle the same as Respondents' Exhibit Whitman Saddle to be the same as your old one?

(Objected as incompetent, irrelevant, and immaterial.)

Ans. Probably not.

Int. 11. What difference or differences in those saddles would prevent such a mistake?

(Same objection.)

Ans. The pommel in Respondents' Exhibit Whitman Saddle is distinctly different from the pommel in the saddles Exhibit A and Exhibit C in having the sharply defined rear outlined by a fall of

over an inch from the top of the pommel to the line of the top of the bar at the edge of the slot. This peculiarity of the Respondents' Exhibit Whitman Saddle I am confident would impress me strongly on seeing the saddle.

273 (Respondents' counsel offers in evidence Respondents' Identification Exhibit No. 1.)

Int. 12. If you had owned and ridden for three months, more or less, a saddle same as Respondents' Exhibit Whitman Saddle and that saddle had become lost or stolen and you should go to a saddler's for the purpose of buying a new saddle like your old one, would you or would you not (straps, flaps, and jockeys not now to be considered) take such a saddle as Complainant's Exhibit A, Complainant's Exhibit C, or Respondents' Exhibit Park Saddle to be the same as your old saddle?

(Same objection.)

Ans. Probably not, for the reason that I cannot find in those three saddles the peculiarly marked feature that so impresses me in the pommel of the saddle, Respondents' Exhibit Whitman Saddle.

Int. 13. If you had owned and ridden for three months, more or less, such a saddle as is shown in figure 1 of Complainant's Exhibit Whitman Patent and your saddle became lost or stolen and you went to a saddler's to buy a new saddle like your old one, would you or would you not (jockeys, flaps, and straps not now to be considered) take or mistake such a saddle as Complainant's Exhibit A, Complainant's Exhibit C, or Respondents' Exhibit Park Saddle to be the same as your old saddle?

(Same objection.)

Ans. Probably not.

Int. 14. Why not?

(Same objection.)

Ans. For the reason that the peculiar effect produced on my mind by the outline of the pommel B is not produced when I examine the three saddles inquired of.

Int. 15. What, if you know, is the photograph that I hold in my hand?

Ans. It is a photograph of Respondents' Exhibit Straus-Granger Tree, made by C. T. Stuart, of Hartford, under my directions.

(Photograph just referred to offered in evidence and marked Respondents' Exhibit Photograph of Straus-Granger Tree, H. E. T., ex.)

274 Int. 16. What is this second photograph which I hold in my hand?

Ans. It is a photograph of Respondents' Exhibit Jenifer-McClellan Tree, made by Stuart under my direction.

(Photograph last referred to is offered in evidence and marked Respondents' Exhibit Photograph of Jenifer-McClellan Tree, H. E. T., ex.)

Int. 17. What is this third photograph that I hold in my hand?

Ans. It is a copy of figure 1 of the photographic picture accompanying the Patent Office copy of patent to R. E. Whitman, No. 10844, the same being marked Respondents' Identification Exhibit No. 1, A. B. C., N. P. This copy was also made by Stuart by my direction and the several pictures were taken in my presence.

(Photograph last referred to is offered in evidence, and the same is marked Respondents' Exhibit Photograph of Whitman Saddle, H. E. T., ex.)

Int. 18. Will you examine the pictures of saddles in Respondents' Exhibits Whitman Catalogues No. 1, No. 2, No. 3, and No. 4, and say which of them (paying no attention to straps, flaps, and jockeys) produce on your mind the same impression as to appearance and configuration as is produced on your mind by looking at figure 1 of the Whitman patent in suit?

Ans. In catalogue No. 1 I find such a saddle illustrated on page 5 and designated "officer's saddle;" on page 8 is shown a farmer's saddle that has a pommel of a shape that produces such an effect on my mind as is produced by examining the pommel of figure 1 of the photographic picture in the said patent.

The outline of the front lower side and rear of the bars in this latter saddle appear to me to be sharply different from the lines of like parts in figure 1 of the patent.

On page 19 there is shown a picture or cut of a "tree with straps" that by reason of the hood on the pommel produces in a slight degree the effect due to the sharply defined rear side of the pommel in the picture of figure 1 of the patent.

And in catalogue No. 2 I find such a saddle shown on page 16 and marked "officer's saddle."

275 In catalogue No. 3, the hood on the pommel of cut No. 22 causes a slight impression of similarity as to the back of the pommel, while the rest of the outline of the saddle produces the same impression on my mind as is produced by looking at the corresponding parts of figure 1 of the patent.

In catalogue No. 4, the saddle shown in cut No. 22 produces the effect on my mind as already stated in regard to the same cut shown in catalogue No. 2.

I find no other trees in the said catalogues that produce the same impression as to appearance and configuration as is produced on my mind by looking at figure 1 of the Whitman patent in suit.

Direct examination closed.

Cross-examination by Mr. BUCK:

X Int. 19. Have you business relations with Mr. Simonds, the respondents' counsel in this suit?

Ans. None whatever as counsel. I have had several photographs

made of several exhibits in the case, but have no business relation with Mr. Simonds as counsel. From my experience as civil engineer and draughtsman I have been interested in matters in this case that relate directly to features of outline of saddles or construction of same. I am in partnership with Mr. Simonds in the patent-soliciting business, but have no interest whatever in his law business.

X Int. 20. Does the door of the offices which you occupy bear both your name and his?

Ans. The door of the office occupied by the firm of Simonds & Burdett, patent solicitors, bears both our names, while the door of Mr. Simond's office, which communicates with our office, bears only his name.

X Int. 21. What saddle are you using now?

Ans. The one that I now use is a McClellan saddle—that is, I bought it as such and believe it to be such.

X Int. 22. Have you ever used the Jenifer saddle?

Ans. Not to my knowledge. The only Jenifer that I remember seeing is the one shown in the model filed in the Patent Office as accompanying the application on which the Jenifer patent issued.

Examination closed.

CHARLES L. BURDETT.

276 Subscribed and sworn to this 9th day of July, A. D. 1887, before me—

HENRY E. TAINTOR, *Examiner.*

WILLIAM E. SIMONDS, witness on the part of the respondents, called and duly sworn, deposes and says:

The Respondents' Exhibit Photo. of Muley Tree, Respondents' Exhibit Photo. of Kilgour Tree, Respondents' Exhibit Photo. of Sullivan's Granger Tree, and Respondents' Exhibit Photo. of Jenifer-McClellan Tree were taken here in Hartford, Connecticut, under my own supervision. Respondents' Exhibit Photo. of Muley Tree I believe to be taken from Respondents' Exhibit Hide-Covered Muley Tree. Respondents' Exhibit Photo. of Kilgour Tree I believe to be taken from Respondents' Exhibit Kilgour Tree before the same was colored black. Respondents' Exhibit Photo. of Sullivan's Granger Tree was taken from a Granger tree which is not present in this office, but which I believe to be exactly like Respondents' Exhibit Sullivan's Black Granger Tree, so far as I can distinguish. Respondents' Exhibit Photo. of Jenifer-McClellan Tree was taken from a white-canvas-covered tree, and which, so far as I can distinguish, is exactly like Respondents' Exhibit Jenifer-McClellan Tree.

WM. EDGAR SIMONDS.

Subscribed and sworn to this 9th day of July, A. D. 1887, before me—

HENRY E. TAINTOR, *Examiner.*

CLARENCE E. BUCKLAND, witness on behalf of the respondents, produced and duly sworn, in answer to interrogatories proposed to him by WM. EDGAR SIMONDS, Esq., testifies as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Clarence E. Buckland; my age is 36 years; my residence is East Hartford, Connecticut, and my occupation is draughtsman.

277 Int. 2. Did you make the drawing which is marked on the back Respondents' Identification Exhibit No. 3?

Ans. I did.

(Exhibit last referred to is offered in evidence.)

Int. 3. Did you make it from figure 1 of the photograph I now show you?

(Photograph shown to witness.)

Ans. I did.

(It is stipulated between the parties to this suit that the photograph just shown witness is a duplicate of the photograph in Complainants' Exhibit Whitman Patent. Respondents' counsel offers the same in evidence, and it is marked Respondents' Exhibit Duplicate of Whitman Patent Photograph.)

Int. 4. Is or is not the drawing on Respondents' Identification Exhibit No. 3 an accurate enlargement from figure 1 of Respondents' Exhibit Duplicate of Whitman Patent Photograph?

Ans. I believe it is.

Int. 5. How did you proceed in making the enlarged drawing from the photograph?

Ans. I proceeded in the usual manner by first laying out the photograph in squares, and next made an equal number of squares on the drawing paper and transferred the same in the usual manner known to all draughtsmen.

Int. 6. By the words "the same" do you mean the outlines of figure 1 of the photograph?

Ans. I do.

Int. 7. Are the squares and numbered lines on this photograph and the squares on the big drawing the same that were made and used by you in making this enlargement?

Ans. They are.

Int. 8. Is the drawing which is marked Respondents' Exhibit Enlarged Drawing from Whitman Patent in Suit a correct tracing from the drawing on Respondents' Identification Exhibit No. 3?

Ans. It is.

Cross-examination waived.

CLARENCE E. BUCKLAND.

278 Subscribed and sworn to this 9th day of July, A. D. 1887, before me—

HENRY E. TAINTOR, *Examiner.*

THOMAS W. GLEASON, witness on behalf of respondents, produced and duly sworn, in answer to interrogatories proposed to him by WM. E. SIMONDS, Esq., testifies as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Thomas W. Gleason. My age is 27 years. My residence is Hartford, Connecticut, and my occupation is insurance clerk.

Int. 2. To what extent, if any, have you ridden horseback and used saddles?

Ans. Occasionally since childhood and considerably during the past four years.

Int. 3. How long, if at all, were you ever in the Connecticut national guard?

Ans. Between six and seven years.

Int. 4. During what portion of that time were you a mounted officer?

Ans. About three years.

Int. 5. If you had owned and ridden for three months, more or less, a saddle like that shown in figure 1 of the photograph I show you, marked Respondents' Identification Exhibit No. 1, and your saddle had become lost or stolen and you should go to a saddler's for the purpose of buying a new saddle like your old one, would you or not (flaps, jockeys, and straps not now to be considered) take or mistake such a saddle as Complainant's Exhibit A, Complainant's Exhibit C, or Respondents' Exhibit Park Saddle to be the same as your old saddle?

(Question objected to as irrelevant, immaterial, and incompetent.)

Ans. No.

Int. 6. Why not?

(Same objection.)

279 Ans. On account of the angular profile of the opening in the saddle as viewed from the side.

Int. 7. If you had owned and ridden for three months, more or less, a saddle like Respondents' Exhibit Whitman Saddle and your saddle had become lost or stolen and you should go to a saddler's for the purpose of buying a new saddle like your old one, would you or not (flaps, jockeys, and straps not now to be considered) take or mistake such a saddle as Complainant's Exhibit A, Complainant's Exhibit C, or Respondents' Exhibit Park Saddle to be the same as your old saddle?

(Same objection.)

Ans. No.

Int. 8. Why not?

(Same objection.)

Ans. For the same reason as given in my answer to Int. 6.

Direct examination closed.

Cross-examination by Mr. BUCK:

X Int. 9. When you first saw the photograph marked Respondents' Identification Exhibit No. 1 and the saddles to which you have testified was your attention called to the angular place back of the head to which you have referred?

Ans. I noticed the difference at once.

X Int. 10. Before or after your attention was called to it?

Ans. I think the question implies that my attention was called to it.

X Int. 11. Will you say positively whether or not your attention was so directed?

Ans. It was; after I had noted a difference by observation.

X Int. 12. Have you ever ridden a Whitman saddle?

Ans. As an officer in the Connecticut national guard I used a saddle which I think is called a Whitman in the bill of dress of the First regiment. Further than this I know nothing of its proper name.

Examination closed.

THOMAS W. GLEASON.

280 Subscribed and sworn to this 9th day of July, A. D. 1887, before me—

HENRY E. TAINTOR, *Examiner.*

HARRY R. WILLIAMS, witness on the part of the respondents, produced and duly sworn, in answer to interrogatories proposed to him by WM. E. SIMONDS, Esq., testifies as follows:

Int. 1. What is you- name, age, and residence?

Ans. My name is Harry R. Williams; my age is 25 years; my residence is Hartford, Connecticut.

Int. 2. What experience, if any, have you had in riding horseback and using saddles?

Ans. I have had more or less experience in riding horseback, at one time having had a horse of my own for a short period. I rode him with a saddle.

Int. 3. If you had owned and rode for three months, more or less, a saddle like that shown in figure 1 of the photograph I show you, marked Respondents' Identification Exhibit No. 1, and your saddle had become lost or stolen and you should go to a saddler's for the purpose of buying a new saddle like your old one, would you or not (flaps, jockeys, and straps not now to be considered) take or mistake such a saddle as Complainant's Exhibit A, Complainant's Exhibit C, or Respondents' Exhibit Park Saddle to be the same as your old saddle?

(Question objected to as irrelevant, immaterial, and incompetent.)

Ans. No, sir; my impression would be that I would not.

Int. 4. Why not?

(Same objection.)

Ans. The saddle supposed to represent my own is cut away back of the pommel much more than the three exhibits mentioned, and is a much flatter saddle.

Int. 5. If you had owned and ridden for three months, more or less, a saddle like Respondents' Exhibit Whitman Saddle and your saddle had become lost or stolen and you should go to a sad-
281 dler's for the purpose of buying a new saddle like your old one, would you or not (flaps, jockeys, and straps not now to be considered) take or mistake such a saddle as Complainant's Exhibit A, Complainant's Exhibit C, or Respondents' Exhibit Park Saddle to be the same as your old saddle?

(Same objection.)

Ans. I should not.

Int. 6. Why not?

(Same objection.)

Ans. Because the saddle supposed to be mine is cut away back of the pommel much more than either of the three exhibits mentioned.

Int. 7. Not considering flaps, straps, and jockeys, do you distinguish any difference in shape and configuration between Complainant's Exhibit A, Complainant's Exhibit C, and Respondents' Exhibit Park Saddle?

Ans. There is a little difference, but not much. It is very slight. The pommel of the Park saddle is somewhat higher than the pommel of the others. The cantle of the Park saddle is also slightly higher.

Direct examination closed.

Cross-examination waived.

HARRY R. WILLIAMS.

Subscribed and sworn to this 9th day of July, A. D. 1887, before me—

HENRY E. TAINTOR, *Examiner.*

Respondents' evidence closed.

282 *Certificate.*

I, Henry E. Taintor, examiner duly appointed by the circuit court of the United States for the district of Connecticut, do hereby certify that on the several days named in the depositions hereto annexed I was attended, room No. 22 at 2 Central row, in the city of Hartford and State of Connecticut, by the counsel and witnesses aforesaid; that said witnesses were each duly sworn and examined and the deposition of each witness was reduced to writing and read to the witness and by him subscribed in my presence, and that exhibits were introduced and offered in evidence in said cause as noted in said deposition.

Dated at Hartford, Conn., this 9th day of July, A. D. 1887.

HENRY E. TAINTOR, *Examiner.*

283 United States Circuit Court, District of Connecticut.

THE WHITMAN SADDLE COMPANY
v.
SMITH, BOURN & COMPANY. } In Equity.

Testimony taken on the part of the respondents in the above-entitled case before Henry E. Taintor, an examiner of said court, at his office, in the city of Hartford and State of Connecticut, on the 11th day of October, 1887, by consent of counsel for the different parties.

Respondents' counsel offers in evidence a certified duplicate of the model pertaining to the application on which issued the patent to Walter H. Jenifer for improvement in saddle-, number 28867, dated June 26, 1860, and said model is marked "Respondents' Exhibit Jenifer Patent Model."

HENRY E. TAINTOR, *Examiner.*

284 United States Circuit Court, District of Connecticut.

THE WHITMAN SADDLE COMPANY
v.
SMITH, BOURN & COMPANY. } In Equity.

JEFFERSON CITY, MO., *October* 26, 1887.

Testimony taken on behalf of respondents for final hearing, under the 67th rule in equity of the U. S. *superior* court, as amended, in the Bragg building, over the post office, at Jefferson City, in the county of Cole and State of Missouri, before George Wagner, notary public within and for said county and State, pursuant to legal notice.

Present: Louis Wagner, Esq., and D. H. McEntire, Esq., on behalf of said respondents; no appearance for complainant.

JOHN S. SULLIVAN, being duly called and sworn on behalf of respondents, testified as follows:

Q. 1. Mr. Sullivan, state your age, occupation, and residence.

A. I am forty-eight years old; reside in Jefferson City, Missouri; occupation that of a saddle-tree manufacturer.

Q. 2. How long have you been engaged in the saddle-tree manufacturing business?

285 A. Nearly fourteen years.

Q. 3. Have you read the deposition of William C. C. Mehlbach in the case of The Whitman Saddle Company against Smith, Bourn and Company, now pending in the United States circuit court for the district of Connecticut?

A. Yes, sir.

Q. 4. Please state what your recollection is of the conversation between yourself and said Mr. Mehlbach, alluded to by him in his said deposition as having taken place at your place of business in this city in the spring of 1886.

A. I have read Mr. Mehlbach's deposition and will state, in March, 1886, a person came to my office about 11 o'clock a. m. and in a hurried and quick tone introduced himself as a partner of H. H. Hiser, of Denver, Colorado. The name of the individual introducing himself I did not catch. Knowing Mr. Hiser quite well, I asked after him, and to my inquiry he stated he had been a partner of Mr. Hiser's something less than one year. Mehlback continued by saying that he was on his way east, and, as they contemplated manufacturing a line of light city riding saddles, he had stopped off to see what I had in the way of saddle-tree- suitable for such purposes. I proceeded to show him some trees I had in stock, and then went down-stairs and continued showing him samples of trees, among them a Park tree number one, with a round cantle. He then asked if I made the same tree with a fan-tail or peaked cantle; I sent and got the only one I had in the factory to show him. After looking at the two trees he remarked they had used trees very much like these trees shown him, but he thought they were called the Whitman tree. I answered him, although looking something like the Whitman tree, they were really a superior tree to the Whitman tree; that we canvassed our trees and used better materials in their construction than Whitman did in his. We finally returned to the office, when he asked if I had a catalogue of saddle-trees; I handed him one of our catalogues. After looking it over he remarked he did not see the Park tree there. I told him we had never had a cut made illustrative of the tree. He then requested that I write the name and prices of the Park trees shown him, which I did in the catalogue, writing the words "Park No. 1" and "Park No. 6." He then asked that I write the word Whitman, saying that they would more readily
286 know what tree was meant by Whitman than by the name Park, as they had used a few of the Whitman trees. I did as requested and wrote the name Whitman in parenthesis. He then remarked that he had an engagement uptown at twelve o'clock and would call that evening, which he did, accompanied by Mr. Louis Wagner, and very soon asked to be shown the same trees looked at in the morning. We all went down-stairs, when Mehlbach went direct to the bench whereon lay the Park tree. After looking at it some time he remarked, "This is a Whitman tree, I believe." I told him no; it was a Park tree. He then crossed over to another part of the factory; meantime I had begun to suspect he was there for something else than to buy trees. After examining some sample trees there he returned to and picked up the Park tree he at first looked at, and after examining it said, "This you call a Whitman tree, do you not?" I replied, "No; and what do you want here anyway?" He then handed me his card; I looked at it and saw who he was and invited him outside of the factory. I was very much incensed at the deception he had practiced, and told him so in a very few words, and told him I made no secret of making these trees, as I had had his patent carefully examined before commencing to manufacture this style of tree and found they claimed to have patented principles that were as old as saddle-trees themselves, and that I did not propose, as a manufacturer of saddle-trees, to allow any one to claim a

patent on a thing that I used and every other saddle-tree maker used without testing it; hence concluded that his patent was fraudulently and wrongfully issued; that I expected Col. Whitman or his representatives to call and see or write me if they felt that I was infringing their rights, but did not expect they would come to get information by a trick and deception that they could have had by coming to me like gentlemen and ask to know about the tree I was making. I would have willingly shown them the trees, as I wished them to bring suit and have the matter settled as to the validity of their patent. He alluded to a decree in the United States courts their favor against the Peters and Calhoun Company and Joe Bevan, of Newark, New Jersey. I told him I knew all about those cases, as one of the parties, Mr. Bevan, had written me that he was compelled to settle with the Whitman Saddle Company for the reason that he did not have the money to stand the suit and told him to go
287 and bring suit against me and he would not find in me a Joe Bevan or Peters and Calhoun Company; that when he got through with me he would have a good patent or nothing. He claimed I was selling the trees as a Whitman tree. I told him I was doing nothing of the kind; that he had labored during our entire conversation to put the word Whitman in my mouth instead of Park, and that he continually tried to confound and confuse the names of the two trees.

Q. 5. Mr. Mehlbach, in answer to question forty-five in his deposition above referred to, says, "When going through factory the two Whitman trees already referred to in my testimony were lying together with other sample trees. I asked him (Sullivan) what these were and he took them up, naming the one with the tail the No. 1 Whitman tree and the other one the No. 6 Whitman tree." Is this statement of Mr. Mehlbach true or not?

A. When we first went down-stairs there were no two Park trees lying together. At his request I sent and got the No. 1 Park tree, fan-tail, to show him, and I want my answer to be considered as strong as language can make it that I never pointed out any tree or trees in my factory to Mehlbach or any one else and called it a Whitman. When I first commenced to make these trees (Park) I had them canvassed black for no other special reason than that they could be readily told from Whitman or any other of that style of tree. Whitman's trees, all that I ever saw, were either canvassed white or not canvassed at all. My patterns were originally and are now marked Park. I represented the tree to the trade as Park, sold it as Park, run it through my factory in course of construction as Park, shipped it as Park, built it as Park, and never called it by any other name. I see no reason why I should represent it as a Whitman to this fraudulent buyer.

Q. 6. Mr. Mehlbach, in answer to question six (6) of the deposition above referred to, states, in course of conversation, that the secretary of the State of Missouri, he, the secretary, "spoke in high praise of the Whitman saddle, and wanted me (Mehlbach) to look at the one in his barn. I went with him to his barn, looked at it, and, though it appeared to be in every respect like a Whitman tree,

I soon discovered that it was not made by ourselves, when he explained to me that Mr. John S. Sullivan had made him a present of it." What do you know, if anything, about this tree or saddle?

288 A. I gave Mr. M. K. McGrath, secretary of State of Missouri, a Park tree No. 6, which has a round cantle and has nothing whatever to do with the tree in suit, as the tree in suit is the fan-tail tree. I had a conversation with Mr. McGrath since receiving a copy of Mr. Mehlbach's deposition. He states that Mehlbach came to him and either had a letter of introduction or introduced himself as being connected with a sporting paper or club in New York. During the conversation Mehlbach produced a catalogue, and in it he (McGrath) saw a cut of a Whitman tree, and remarked that he had one similar to it, and Mr. Mehlbach requested to see the same, which he, McGrath, showed him. At the time that McGrath showed it to him it was a naked saddle-tree; no rigging or leather on it whatever. In this connection I wish to call attention to Mehlbach's deposition, wherein he says the secretary of state, McGrath, spoke in high praise of the Whitman saddle then in his barn, and even go- so far, so afraid is he, Mehlback, that he had not stated the exact language of said McGrath, at the close of his deposition he asked that the word "the" be erased and the word "his" Whitman saddle be inserted, while the facts are that said McGrath had no saddle of any kind, but the naked tree without any rigging whatsoever, canvassed black, and easily told from the Whitman tree.

JOHN S. SULLIVAN.

Subscribed and sworn to by said John S. Sullivan before me—

——— ———,

(Notary's signature and seal.)

Adjourned to October 27th, 1887, at 10 a. m., at said place.

OCTOBER 27TH, 1887—10 a. m.

Hearing resumed.

Parties present as before.

LOUIS WAGNER, being duly called and sworn, testified in respondents' behalf as follows:

Q. 1. State your age, residence, and occupation.

A. I am twenty-six years of age; am an attorney-at-law at Jefferson City, Mo.

289 Q. 2. What official position, if any, do you fill?

A. Am prosecuting attorney of this, Cole, county, and have been in the practice since the year 1883.

Q. 3. Where did you reside in the spring of 1886?

A. In the spring of 1886 I practiced law here in Jefferson City.

Q. 4. Do you remember of a gentleman by the name of Mehlbach, representing the Whitman Saddle Company, calling upon you in the spring of 1886?

A. I do.

Q. 5. Did Mr. Mehlbach on this visit have you accompany him to the office and shop of Mr. John S. Sullivan?

A. He did. I accompanied him at his request.

Q. 6. How came you to accompany Mr. Mehlbach in this visit to the office and shops of said Sullivan?

A. Some time before the evening on a certain day in the spring of 1886 Mr. Mehlbach called at my office, introduced himself and made himself very agreeable. I do not now remember whether or not he called in the morning or if he called twice that day, but I do remember in the afternoon I accompanied him to Mr. Sullivan's shop at the State penitentiary, he saying at the time he suspected Mr. Sullivan was infringing upon the patent of a saddle-tree secured by the firm he represented. At that time I was doing some business for convicts in the penitentiary, and, having this in view, together with Mr. Mehlbach's request that I accompany him, I then went with him to the penitentiary and to Sullivan's shops and office. Mr. Mehlbach proceeded in a very direct manner and asked Mr. Sullivan to show the sample trees that he, Sullivan, had shown him that morning.

Q. 7. Where was this that you first saw Mr. Sullivan that evening or afternoon?

A. In the office of the Sullivan Saddle-Tree Company in Jefferson City, Mo.

Q. 8. State what took place in conversation or act between Mr. Sullivan and Mr. Mehlbach that afternoon.

A. Mr. Sullivan invited us into his shops down-stairs in the first story of the building. Mr. Mehlbach proceeded to a bench on which lay a tree of a dark color, I think, and Mr. Mehlbach remarked or asked if that was a Whitman tree, to which Mr. Sullivan answered that it was a tree the name of which I do not now remember.

290 Q. 9. Do you remember whether Mr. Sullivan used the word Whitman at all designating the tree he was manufacturing?

A. No. Mr. Sullivan did use the word Whitman, as I now remember, only in saying that his saddle-tree was as good if not better than the Whitman tree. Then Mr. Sullivan, Mr. Mehlbach, and myself went further back into the shop where Mr. Mehlbach again examined another tree, and returned to the bench on which lay the tree Mr. Mehlbach had picked up when he first entered the shop, and Mr. Mehlbach again picked up the tree he had first picked up when he entered the shop, and again asked Mr. Sullivan if that was the Whitman tree. Mr. Sullivan then remarked that he knew Mr. Mehlbach did not wish to buy any trees, but was a spy, and asked him to the outside of the shop. I got the impression at the time that Mr. Mehlbach labored to placed the word Whitman into Mr. Sullivan's mouth.

When once outside the shop Mr. Mehlbach said that Mr. Sullivan had been selling that tree as a Whitman tree; this Mr. Sullivan denied, and said that he, Mehlbach, had labored during the entire conversrtion to place the word Whitman into his, Sullivan's, mouth.

After some further conversation the two parted, Mr. Sullivan

telling Mr. Mehlbach that he knew he was not infringing on the Whitman patent, and if Mehlbach thought so, he could bring suit and at the end Whitman would either have a good patent or nothing.

Q. 10. Do you know whether Mr. Mehlbach tried to leave the impression on Mr. Sullivan's mind that he was from somewhere else than New York; and, if so, where?

A. Yes; Mr. Mehlbach represented himself to Sullivan as representing a Denver house, the name of which I do not remember.

LOUIS WAGNER.

Subscribed and sworn to by said Louis Wagner, before me—

——— ———.

(Notary's signature and seal.)

Adjourned to October 28th, 1887, 10 a. m., at same place.

291 OCTOBER 28TH, 1887—10 a. m.

Hearing resumed.

Parties present as before.

JAMES M. HAYES, being duly called and sworn, testified in respondents' behalf as follows:

JAMES M. HAYES, of lawful age, being produced, sworn, and examined on the part of the defendants, deposeth and saith:

Q. 1. Mr. Hayes, state your age, residence, and business.

A. I am twenty-seven years of age; live at Jefferson City, Missouri; am employed by the J. S. Sullivan Saddle-Tree Company.

Q. 2. How long have you been in the employ of the J. S. Sullivan Saddle-Tree Company?

A. Eight to ten years.

Q. 3. What have been your special duties as an employee of the J. S. Sullivan Saddle-Tree Company?

A. Part of the time I have been invoicing trees to the trade and have always overlooked the making out of invoices; looking after getting out orders, and seen that they were properly and promptly filled, and had charge of the business in Mr. Sullivan's absence.

Q. 4. Then you are perfectly familiar with all styles of trees manufactured by the Sullivan Saddle-Tree Co., are you not?

A. Yes, sir.

Q. 5. Were you at home and in the factory when the Sullivan Saddle-Tree Company first commenced to manufacture the tree known as the Park?

A. Yes, sir.

Q. 6. Do you know how the patterns of these trees were originally marked?

A. They were marked "Park."

Q. 7. How are they now marked?

A. "Park."

Q. 8. How have these patterns always been marked?

A. "Park."

Q. 9. Do you know of their ever being billed or shipped and invoiced by any other name than "Park"?

A. No, sir.

Q. 10. If they had been billed, shipped, or invoiced by any other name than "Park," would you have been likely to know it?

292 A. Yes, sir.

Q. 11. Did you ever know of the Sullivan Saddle-Tree Company manufacturing or selling to the trade any saddle-tree by the name of Whitman?

A. No, sir.

Q. 12. If the Sullivan Saddle-Tree Company had shipped, billed, or invoiced any trees by the name of "Whitman," would you have been likely to know it?

A. Yes, sir; it is impossible for any goods to be manufactured, shipped, or invoiced by the Sullivan Saddle-Tree Company without my knowledge.

Q. 13. Did you ever have occasion to examine letters patent No. 10844, granted Royal E. Whitman?

A. I have.

Q. 14. How did you come to examine said patent?

A. When Mr. Sullivan came to examine the Whitman patents he had me write to the Patent Office at Washington, D. C., for copies of Whitman's patents and drawings, and when they were received we examined them together frequently.

Q. 15. Did you see a Whitman tree in Sullivan's factory?

A. I have. Mr. Sullivan bought one of each style or number to examine in connection with the patent papers.

Q. 16. Now, I will call your attention specially to patent numbered 10844 of the peaked cantle or fantail tree. Did you find, upon examination, any difference between the claims and specifications and drawings as furnished by the United States Patent Office and the Whitman fantail tree Mr. Sullivan got to examine in connection with said patent?

A. I did.

Q. 17. Was there any mark or stamp upon the Whitman tree procured by Mr. Sullivan; if so, what was it?

A. There was a printed strip attached to the Whitman tree bearing Whitman's name and date of patent, &c.

Q. 18. Can you represent the difference between the Whitman tree, as called for by the patent papers and drawings numbered 10844, sent by the United States Patent Office, and the sample Whitman tree procured by Mr. Sullivan?

A. I can.

293 (Here witness produces ink sketches of the Whitman tree procured by Sullivan and the one as it appears by drawing accompanying said letters patent, which said drawing and sketches are hereby offered in evidence and marked ("Exhibit A.")

Figure one (1) in said sketch represents the tree as called for by drawings and letters patent No. 10844. The red-ink lines in said number one (1) shows the drop behind the head or pommel of the

tree. The patent states that this drop-off, as designated by the red line, is some inches. Figure two (2) in said sketch represents the Whitman tree procured by Mr. Sullivan, and shows but a very slight drop behind the head as designated by the red line in said figure two (2).

Q. 19. You say Whitman's patent called for and the drawing shows a drop of some inches at the rear of the pommel from the head to where the bars join the fork. What do you mean by some inches?

A. Not less than two would be "some."

Q 20. I will call your attention to the red lines as shown in sketch in evidence. Suppose a customer was to send a tree cut down like shown in figure one (1) and request that you make one like it, except to build up as indicated by red line in figure two (2), would you consider it a different style of tree and give it a number and a name?

A. Yes, sir; we would give it a number and a name. For instance, if the last number on our tree book of patterns (we give all our tree patterns consecutive numbers in our tree book of patterns) were one thousand, we would number this tree one thousand and one (1001), and if the man's name ordering the tree happened to be Smith we would designate the tree he ordered as "Smith's Granger 1001."

Q. 21. Which one of these trees, as represented by figures one and two shown in the sketch marked "Exhibit A," does the Park tree most nearly resemble?

A. It resembles very nearly the one designated as figure two.

Q. 22. Then, as I understand you, after Mr. Sullivan and yourself investigated the Whitman patent and drawing numbered 10844, you found that the tree, as shown by the sample "Whitman" procured by Mr. Sullivan, was not the same tree as claimed and represented by letters 10844?

294 A. Yes, sir; we found they were not alike; hence concluded Whitman had no right to claim a patent on a thing he had no patent on. In fact, we thought his original patent was wrongfully issued, as there was nothing new in his invention, all being old and made long prior to said invention.

JAMES M. HAYES.

Subscribed and sworn to by said James M. Hayes before me—

——— ———.

(Notary's signature and seal.)

FREDERICK SCHAPER, being duly called and sworn, testified on respondents' behalf as follows:

Q. 1. Mr. Schaper, what is your age, residence, and occupation?

A. I am forty-seven years of age; reside at Jefferson City, Missouri, and am employed as shipping clerk by the J. S. Sullivan Saddle-Tree Company.

Q. 2. As said shipping clerk what are your duties?

A. I have to see that the saddle-trees are packed in the right way and mark and tag the packages.

Q. 3. How long have you been in the employ of the Sullivan Saddle-Tree Company as shipping clerk?

A. About from nine to ten years. I was away from the Sullivan Saddle-Tree Company about five years ago, on account of ill health; but for the past five years I have been in the constant employ of the Sullivan Saddle-Tree Company, and I do not think that I lost even one single day during these last five years, but was daily at my post of duty.

Q. 4. Mr. Schaper, do you remember marking any trees manufactured by the Sullivan Saddle-Tree Company as being a Park tree?

A. Yes, sir.

Q. 5. Do you remember of ever marking any saddle-trees coming from or manufactured in the Sullivan Saddle-Tree Company's shops as being the Whitman trees?

A. No, sir.

295 Q. 6. Are you positive of this?

A. Yes, sir.

Q. 7. If any trees of the Whitman patent or Whitman trees had been manufactured or shipped by the Sullivan Saddle-Tree Company, would you have been likely to have knowledge thereof?

A. If any such Whitman trees had been manufactured or shipped by the company within the past five years I should have known it.

FREDERICK SCHAPER.

Subscribed and sworn to by said Frederick Schaper before me——

——.

(Notary's signature and seal.)

MICHAEL K. MCGRATH, being duly called and sworn, testified in respondents' behalf as follows:

Q. 1. Mr. McGrath, what is your age, residence, and employment?

A. I am fifty-three years of age; reside at Jefferson City, Missouri; am secretary of the State of Missouri.

Q. 2. How long have you been secretary of state in Missouri?

A. Thirteen years.

Q. 3. Mr. McGrath, do you remember meeting a gentleman by the name of William C. C. Mehlbach some time in the spring of 1886?

A. Yes; I met him in the Madison hotel office room, in Jefferson City, Mo.

Q. 4. How did you become acquainted with him?

A. Somebody introduced him to me by name, I think, and he introduced himself as the vice-president of the Sportsman, a well-known sporting and agricultural paper of New York city, and, I being a newspaper man myself, we got into a very friendly conversation, in the course of which he said he was also connected with a saddlery company of New York and gave the name of it, which I do not now remember.

Q. 5. Who first introduced the subject of saddles as a subject of conversation at this time—you or he?

296 A. He did.

Q. 6. Please state what other conversation, if any, took place between you.

A. In the course of conversation he described his saddlery establishment and the kind of saddles they were manufacturing, and I think he produced a catalogue of the saddles made by them. In describing the saddle-trees, or in looking at the catalogue, I saw a tree that looked like one which Mr. Sullivan made me a present of and so stated. Our conversation became very friendly after that, and as I was going out of the hotel on my way to supper, my house being only about one and one-half squares from the hotel, he walked out with me unsolicited, and when we got up as far as my front gate he asked me if he could see the saddle-tree I received from Sullivan. I said, Certainly, and took him down to the stable, being anxious to show him some of our western work and what we could do in the West in his line. I told him the Sullivan Saddle-Tree Company was a large and well-known company and sold saddle-trees all over the country. I took the saddle-tree off of the nail where it hung in my stable and handed it to him; he examined it and told me and said it was a Whitman tree, and then told me of Whitman and then of his firm's connection with the Whitman patent.

Q. 7. Was the saddle which you showed him really a saddle or only a saddle-tree?

A. It was a saddle-tree uncovered and dark colored.

Q. 8. Did the saddle-tree have a round or peaked cantle?

A. The cantle was round.

Q. 9. Mr. Melbach in his deposition, in answer to question number six (6), and in his direct examination, in answer to question sixty-one (61) in said deposition in this cause, said that you "spoke in high praise his (your) Whitman saddle." Is this statement of Mr. Melbach's true or not?

A. I did not use the language attributed to me by Mr. Mehlbach. I had no saddle, but only a saddle-tree; the saddle-tree has only been rigged since Mr. Mehlbach was here, and is yet in the saddler's shop and has not been in my house or barn or stable since it has been rigged; hence it was impossible for me to have spoken of my saddle then. I may have praised the tree and said it would make a nice saddle.

297 Q. 10. Do you remember where you first informed Mr. Mehlbach that Mr. Sullivan had given you a saddle-tree?

A. I do. It was at the hotel and before we went up to the house—

MICHAEL K. McGRATH.

Subscribed and sworn to by said Michael K. McGrath before me—

____ ____.

(Notary's signature and seal.)

I, George Wagner, notary public within and for the county of Cole and State of Missouri, do hereby certify that on the several

days named in the depositions hereto annexed I was attended at the office of Louis Wagner, in the Bragg building, over the post office in Jefferson City, in said county of Cole and State of Missouri, by the counsel and witnesses aforesaid; that said witnesses were each duly sworn and examined and the deposition of each witness was reduced to writing and read by him, subscribed in my presence, and that exhibit was introduced and offered in evidence in said case as noted in said deposition.

Dated at said Jefferson City, Missouri, — day of ——, 1887.

298 United States Circuit Court, District of Connecticut.

THE WHITMAN SADDLE COMPANY
v.
SMITH, BOURN & COMPANY. } In Equity.

Testimony taken on the part of the defendant under the 67th rule in equity of the United States Supreme Court. as amended, before Henry E. Taintor, examiner, beginning at 10 o'clock in the forenoon of Tuesday, November 15, 1887, at room No. 22, at No. 2 Central row, Hartford, Connecticut.

Present: John A. Stoughton, Esq., counsel for the defendants, no person appearing for the plaintiff.

Adjourned to Monday, November 21st, 1887, at 2 o'clock p. m.

MONDAY, *November* 21*st*, 1887—2 p. m.

Met pursuant to adjournment.

Present: Henry L. Buck, president of the plaintiff company, and Wm. E. Simonds, counsel for the respondents.

299 HARRY R. WILLIAMS, witness on the part of the defendants, called and duly sworn, in answer to interrogatories proposed by W. E. SIMONDS, Esq., testifies as follows:

(Representative of complainant states that in view of the fact that respondents' proofs were closed upon the ninth of July last, and in view of the further fact that complainant has put into the case no new exhibits relating to any new matter, and that all new exhibits made use of by complainant since that date have been entirely for the purpose of rebuttal of respondents' proofs taken before the tenth day of July last, and especially for the use of complainant's witness Newbury in such rebuttal evidence, and in view of the further fact that respondents' counsel attended the examination of said Newbury, and that he neglected to cross-examine said Henry F. Newbury, which would have been the proper course in relation to any matter pertaining to said new exhibits, that representative of complainant objects to the taking of the deposition of this witness, and he also objects to the respondents putting in any more testimony on the ground that it is immaterial, irrelevant, and incompetent and can be in no respect a fair rebuttal to any testimony given by complainant's witnesses in rebuttal.

Int. 1. Who, if you know, made the two tracings which I hold in my hand?

(Same shown to witness.)
(Objected to as incompetent, irrelevant, and immaterial.)

Ans. I did.

Int. 2. From what did you make this one of the two tracings which I now hold in my hand?

(Same shown witness.)
(Same objection.)

Ans. From Fig. 1 on Complainant's Exhibit Photographs of Newbury-Whitman Saddle.

(Tracing last referred to is offered in evidence as "Respondents' Exhibit Tracing from Photo. of Newbury-Whitman Saddle," and the same is so marked.)

300 Int. 3. Is Respondents' Exhibit Tracing from Photo. of Newbury-Whitman Saddle a correct and accurate tracing from Fig. 1, Complainant's Exhibit Photograph of Newbury and Whitman Saddle?

(Same objection.)

Ans. It is.

Int. 4. From what did you make this other of the two tracings which I now hold in my hand?

(Same shown witness.)
(Same objection.)

Ans. From Fig. 1 on Respondents' Identification Exhibit No. 1.

Int. 5. Is it a correct and accurate tracing therefrom?

(Same objection.)

Ans. It is.

(Tracing last referred to is offered in evidence as "Respondents' Exhibit Tracing from Patent in Suit," and the same is so marked.)

Int. 6. When you made Respondents' Exhibit Tracing from Patent in Suit, did you have Respondents' Exhibit Duplicate of Whitman Patent Photograph as well as Respondents' Identification Exhibit No. 1?

(Same objection.)

Ans. I did.

Int. 7. Why did you use Respondents' Identification Exhibit No. 1 to trace from rather than Respondents' Exhibit Duplicate of Whitman Patent Photograph?

(Same objection.)

Ans. Because photograph Respondents' Identification Exhibit No. 1 was lighter than Respondents' Exhibit Duplicate of Whitman

Patent Photograph; consequently it was easier to distinguish the outline through the tracing cloth.

(Direct examination closed.)
(Cross-examination waived.)

HARRY R. WILLIAMS.

301 Subscribed and sworn to before me this 21st day of November, 1887.

HENRY E. TAINTOR, *Examiner.*

Respondents' counsel states that the two photographs, Respondents' Exhibit Duplicate of Whitman Patent Photograph and Respondents' Identification Exhibit No. 1, were both procured by him from the Patent Office as duplicates of the photograph of the patent in suit.

(Respondents' testimony closed.)

I, Henry E. Taintor, examiner, duly appointed by the circuit court of the United States for the district of Connecticut, do hereby certify that on the day named in the deposition hereto annexed I was attended at room No. 22, at No. 2 Central row, Hartford, Conn., by the counsel and witness aforesaid; that the said witness was duly sworn and examined, and the deposition was reduced to writing and read to the witness and by him subscribed in my presence, and that "Respondents' Exhibits Tracing from Photo of Newbury-Whitman Patent" and "Tracing from Patent in Suit" were introduced in evidence in said cause during the taking of said deposition.

Dated at Hartford, Conn., this 21st day of November, A. D. 1887.

HENRY E. TAINTOR, *Examiner.*

And at the term of said court held at Hartford, in said district, on the third Tuesday of September, 1888, the parties, by their respective counsel, duly appeared, and said cause was fully heard.

And on the 6th day of April, 1889, the court filed its opinion in the words and figures following, viz:

302 Circuit Court of the United States for the District of Connecticut.

WHITMAN SADDLE COMPANY
vs.
CHARLES B. SMITH and Others.

SHIPMAN, *J.:*

This is a bill in equity which is based upon the alleged infringement of design letters patent No. 10844, dated September 24th, 1878, to Royal E. Whitman for a design for saddles.

In the patent the inventor says that the nature of his design is fully illustrated in the photographic picture which accompanies the specification. He further says that the pommel rises at the fork to a point on or nearly on a horizontal level with the raised and prolonged cantle, and that the pommel on its rear side falls nearly per-

pendicularly for some inches, when it is joined by the line forming the profile of the seat. He then proceeds to carefully describe by reference to the letters contained in the picture the lines and curves of his design, which description it is useless to reproduce here in the absence of the picture, whose presence is necessary to make the description plain.

The patentee then says: "I am aware that portions of the curves employed by me have been used in the designing of saddles; but when combined with a longitudinally slotted tree, the lines I employ to give the profile form a new design for saddles, and giving the general idea in the front, lower, and rear lines of a sea fowl or vessel modeled upon the same curves, and by these curves and lines giving the impression of lightness, grace, and comfort, that could not as well be conveyed by any others, as the impression of comfort is given by the large amount of bearing surface obtained without under elevation above the back of the animal, combined with the large
303 seat for the rider, and lightness and grace by the small surface of tree shown in vertical plan, coupled with the form in which it is presented."

The claim is for—

"The design for a riding saddle, substantially as shown and described."

The design is one of especial gracefulness and is a quickly recognized, marked improvement in the beauty of its lines and curves upon its predecessors, so much so that it is a new shape, which has a utility of its own, consisting in the adaptation of the saddle to the lines of the horse's back and shoulders, the roominess of its seat, and its ability to give the rider's knees close contact with the horse. Whether the shape is in all respects superior to other shapes is not important.

The patent comes within the clause of section 4929 of the Revised Statutes which authorizes the issuing a patent to any person who by his own industry, genius, efforts, and expense has invented and produced "any new, useful, and original shape or configuration of any article of manufacture." The new and original shape must also be useful and the utility must be consequent upon the shape. It is not necessary in this case to define the minimum of utility which is sufficient, because there was in this design an obvious utility apart from its beauty. The shape of an article which furnishes added convenience to the user or which makes the article better adapted in some respects to the purposes for which it is used can properly be said to *de* useful within the meaning of section 4929, although the article thus furnished with a new shape could not be the subject of a functional patent for a new or improved manufacture.

The J. S. Sullivan Saddle-Tree Company, a corporation in the State of Missouri, is the real defendant in the case and sold to the nominal defendants sundry saddle-trees, which they also sold
304 and which were exact reproductions of the shape which is being manufactured by the plaintiff under this patent. It is said that neither the shape made by the plaintiff or by the actual

defendant resembled the picture attached to the specification or followed the description in the patent, and that therefore there was no infringement. The specification says that the pommel on its rear side falls nearly perpendicularly for some inches, when it is joined by the line forming the profile of the seat, and in the picture the point of junction is an angle, whereas in the manufactured article it is a curve. The difference between the patented and the manufactured shapes is not important enough to justify a serious question in regard to the fact of infringement. There is a substantial sameness in the two designs as a whole which would deceive the eye of an ordinary purchaser of manufactured saddles.

The question of patentable novelty is the one upon which the most stress has been laid and which has been exhaustively treated by the defendants. No saddle-tree in existence prior to 1878 has been produced which at all resembles the patented shape. The defendants' position in regard to the question of patentability is that the shapes of all saddles were altered by manufacturers to suit the requirements of purchasers, and that old shapes, if modified by the rejection of existing features and by the substitution therefor of other features which were known before the date of the patent, would be the patented shape. This position is most strongly exhibited in the supposed combination of the Jenifer-McClellan and the Granger saddles, each of which existed prior to 1878. It is truly said that the Military Jenifer or the Jenifer-McClellan saddle-tree had a high, packed cantle and a high, prominent pommel, whereas the Granger tree had a "cut-back" pommel and a low, broad cantle, and the argument is that the front half of the Granger and the rear
305 half of the Military Jenifer made the Whitman without the exercise of invention.

It is true, using language broadly, that the Whitman tree shows prominent features of each of these two trees and united two halves of old trees, but the inference that therefore the product or result of Whitman's study and experiment was destitute of invention does not follow. A mechanic may take the legs of one stove and the cap of another and the door of another and make a new design which has no element of invention; but it does not follow that the result of the thought of a mechanic who has fused together two diverse shapes, which were made upon different principles, so that new lines and curves and a harmonious and novel whole are produced, which possesses a new grace and which has a utility resultant from the new shape, exhibits no invention. This was effected by the patentee, and I entertain no doubt that the shape which he produced was entitled to a patent.

Let there be an interlocutory decree for an injunction and an accounting.

Benjamin F. Thurston, for the plaintiff; Wm. Edgar Simonds, for the defendants.

And on the 3rd day of October, 1889, the following final decree was made and entered in said cause, viz:

306 United States Circuit Court, District of Connecticut.

WHITMAN SADDLE COMPANY, Complainant,
vs.
CHARLES B. SMITH, BENJAMIN A. BOURN, and OLCOTT B. COLTON, Members of the Copartnership Firm of Smith, Bourn & Company, Defendants.

Decree.

This cause having come on to be heard at the September, 1888, term of this court on the bill of complaint herein, the answer and amended answer of the defendants thereto, and the proofs for final hearing duly taken and filed, and the said cause having been fully argued by counsel for the respective parties on the 7th and 8th days of February, 1889, Henry L. Buck, Esq., and Benjamin F. Thurston, Esq., appearing and arguing for the complainant, and William Edgar Simonds, Esq., appearing and arguing for defendants, and printed briefs having been submitted on behalf of both parties, and the court having duly considered the premises and prepared a written opinion thereon, the same having been filed on the 6th day of April, 1889—

Now, therefore, on motion of Duncan, Curtis & Page, solicitors for complainant, it is—

Ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, as follows:

That letters patent of the United States number 10844, for a design for saddles, the same being the patent on which this suit was brought, were granted to Royal E. Whitman on the 24th day
307 of September, 1878, and were duly assigned to the complainant herein on or about the 1st day of May, 1880, and that the said letters patent are good and valid.

That the said Royal E. Whitman was the first and original inventor and producer of the design for saddles described and claimed in said letters patent No. 10844, and that the complainant, The Whitman Saddle Company, is the owner of said letters patent.

That the defendants herein have infringed the said letters patent and the exclusive right of the complainant to make, use, and sell the invention described and claimed in the said letters patent by making and selling within this district and elsewhere saddles embodying and containing the design patented in and by said letters patent No. 10844.

That the complainant recover of the defendants the profits, gains, and advantages which the said defendants have received or made or which have arisen or accrued to them, together with the damages which the complainant has suffered or sustained from the manufacture, use, or sale by the defendants of saddles embodying or containing the design of said letters patent No. 10844, and that the complainant recover of the defendants its taxable costs, charges, and disbursements in this suit.

And it appearing to the court that the complainant has presented to defendants' solicitor a statement of the various sums of money

which it has paid out and which it is advised by its counsel constitute taxable costs, charges, and disbursements in this suit, amounting to $480.45, which amount is accepted by defendants' solicitor as the amount of costs, charges, and disbursements legally taxable in favor of the complainant herein, and it also appearing that defendants have made a statement of the number of infringing saddles made and sold by them and the amount of profits which they have made thereon, the latter amounting to $77.00,
308 which said amount has been accepted by complainant's solicitor to include, for the purposes of this suit, the full amount of profits made by defendants and the damages suffered by the complainant by reason of the acts of infringement committed by the defendants—

It is further ordered, adjudged, and decreed that a judgment in the sum of $557.45 be entered in this suit in favor of the complainant and against the defendants, and that the complainant have due execution therefor.

And it is further ordered, adjudged, and decreed that a perpetual injunction be issued in this suit against the said defendants restraining and enjoining them and each of them, their agents, clerks, servants, workmen, employees, and representatives and each of them and all claiming under and through the said defendants, from making, using, or selling any saddles embodying or containing the design or any material and substantial part thereof patented in and by said letters patent No. 10844, and from in any manner imitating or counterfeiting the said patented design or any material or substantial part thereof, or from in any manner infringing the said letters patent No. 10844 or the exclusive rights of the complainant thereunder.

Dated Oct. 3rd, 1889.

N. SHIPMAN,
District Judge.

309 I, Edwin E. Marvin, clerk of the circuit court of the United States for the district of Connecticut, do certify that the foregoing is a true and correct transcript of the original pleadings, evidence, proceedings, decree, and record in the case of The Whitman Saddle Company *vs.* Charles B. Smith and others, doing business under the name of Smith, Bourn & Company.

Seal of Circuit Court, Connecticut.

In testimony whereof I have hereunto set my hand and the seal of said court, at Hartford, in said district, the 11th day of October, A. D. 1889.

E. E. MARVIN, *Clerk.*

Endorsed on cover: Case No. 13,780. Connecticut C. C. U. S. No. 188. Charles B. Smith, Benjamin A. Bourn, and Olcott B. Colton, partners as Smith, Bourn & Company, appellants, *vs.* The Whitman Saddle Company. Filed October 15, 1889.

which it has paid out and which it is advised by its counsel constitute taxable costs, charges, and disbursements in this suit, amounting to $480.45, which amount is accepted by defendants' solicitor as the amount of costs, charges, and disbursements legally taxable in favor of the complainant herein, and it also appearing that defendants have made a statement of the number of infringing saddles made and sold by them and the amount of profits which they have made thereon, the latter amounting to $77.00,
308 which said amount has been accepted by complainant's solicitor to include, for the purposes of this suit, the full amount of profits made by defendants and the damages suffered by the complainant by reason of the acts of infringement committed by the defendants—

It is further ordered, adjudged, and decreed that a judgment in the sum of $557.45 be entered in this suit in favor of the complainant and against the defendants, and that the complainant have due execution therefor.

And it is further ordered, adjudged, and decreed that a perpetual injunction be issued in this suit against the said defendants restraining and enjoining them and each of them, their agents, clerks, servants, workmen, employees, and representatives and each of them and all claiming under and through the said defendants, from making, using, or selling any saddles embodying or containing the design or any material and substantial part thereof patented in and by said letters patent No. 10844, and from in any manner imitating or counterfeiting the said patented design or any material or substantial part thereof, or from in any manner infringing the said letters patent No. 10844 or the exclusive rights of the complainant thereunder.

Dated Oct. 3rd, 1889.

N. SHIPMAN,
District Judge.

309 I, Edwin E. Marvin, clerk of the circuit court of the United States for the district of Connecticut, do certify that the foregoing is a true and correct transcript of the original pleadings, evidence, proceedings, decree, and record in the case of The Whitman Saddle Company *vs.* Charles B. Smith and others, doing business under the name of Smith, Bourn & Company.

Seal of Circuit Court, Connecticut.

In testimony whereof I have hereunto set my hand and the seal of said court, at Hartford, in said district, the 11th day of October, A. D. 1889.

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United States Supreme Court

Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

IN EQUITY.

CHARLES G. SMITH et al.,
(APPELLANTS)

versus

THE WHITMAN SADDLE COMPANY.

Appellants' Brief.

HARTFORD:
CLARK & SMITH, PRINTERS.
1892.

UNITED STATES SUPREME COURT.

IN EQUITY.

CHARLES G. SMITH et al.,
(APPELLANTS,)
versus
THE WHITMAN SADDLE COMPANY.

APPELLANTS' BRIEF.

EXPLANATORY.

THIS is a suit in equity appealed from the U. S. Circuit Court for the District of Connecticut, wherein the decision was rendered by the Honorable Nathaniel Shipman. Appellants here were respondents below. The suit was brought by the Whitman Saddle Company. doing business in New York City, against Charles G. Smith and his co-partners, trading as Smith, Bourn & Company, at Hartford, Conn., for alleged infringement of the patent of Royal E. Whitman for Design for Saddles, No. 10,844, dated September 24, 1878. The Circuit Court sustained the patent and found respondents to be infringers.

The following is the

CIRCUIT COURT'S DECISION.

"SHIPMAN, J. This is a bill in equity which is based upon the alleged infringement of design letters patent No. 10,844, dated September 24th, 1878, to Royal E. Whitman, for a design for saddles.

In the patent, the inventor says that the nature of his design is fully illustrated in the photographic picture which accompanies the specification. He further says that the pommel rises at the fork to a point on or nearly on a horizontal level with the raised and prolonged cantle and that the pommel on its rear side falls nearly perpendiculary for some inches, when it is joined by the line forming the profile of the seat. He then proceeds to carefully describe, by reference to the letters contained in the picture, the lines and curves of

1. It was error for the Circuit Court to base its decision to a degree upon the *utility* of the patented design:

CIRCUIT COURT'S OPINION:

"The design is one of especial gracefulness and is a quickly recognized, marked improvement in the beauty of its lines and curves upon its predecessors, so much so that it is a new shape, which has a utility of its own, consisting in the adaptation of the saddle to the lines of the horse's back and shoulders, the roominess of its seat, and its ability to give the rider's knees close contact with the horse.

Whether the shape is, in all respects, superior to other shapes, is not important.

The patent comes within the clause of Section 4929 of the Revised Statutes which authorizes the issuing a patent to any person who, by his own industry, genius, efforts, and expense, has invented and produced 'any new, useful, and original shape or configuration of any article of manufacture.' The new and original shape must also be useful and the utility must be consequent upon the shape. It is not necessary in this case, to define the minimum of utility which is sufficient, because there was, in this design, an obvious utility apart from its beauty. The shape of an article which furnishes added convenience to the user, or which makes the article better adapted, in some respects, to the purposes for which it is used, can properly be said to be useful within the meaning of Section 4929, although the article thus furnished with a new shape could not be the subject of a functional patent for a new or improved manufacture."

SUPREME COURT'S OPINION:

"The acts of Congress which authorize the grant of patents for designs were plainly intended to give encouragement to the decorative arts. They contemplate not so much utility as appearance, and that, not an abstract impression, or picture, but an aspect given to those objects mentioned in the acts."

* * * *

"And the thing invented or produced, for which a patent is given, is that which gives a peculiar or distinctive appearance to the manufacture, or article to which it may be applied, or to which it gives form. The law manifestly contemplates that giving certain new and original appearances to a manufactured article may enhance its salable value, may enlarge the demand for it, and may be a meritorious service to the public. It therefore proposes to secure for a limited time to the ingenious producer of those appearances the advantages flowing from them. Manifestly the mode in which those appearances are produced has very little, if anything, to do with giving increased salableness to the article. It is the appearance itself which attracts attention and calls out favor or dislike. It is the appearance itself, therefore, no matter by what agency caused, that constitutes mainly, if not entirely, the contribution to the public which the law deems worthy of recompense." (*Gorham Manuf'g Co.* v. *White*, 14 Wall., 511.)

2. It was error for the Circuit Court to say:

"There is a substantial sameness in the two designs, as a whole, which would deceive the eye of an ordinary purchaser of saddles."

When the only evidence of infringement is the *expert* testimony of H. F. Newbury, while Williams, Gleason, and Burdett, all horse-back riders, testify, and Freeman, complainant's superintendent, admits, that they would not mistake respondents' saddle for the saddle of the patent, this Supreme Court having said:

"If, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other." (*Gorham Mfg. Co.* v. *White*, 14 Wall., 511.)

3. It was error for the Circuit Court to disregard and make immaterial the most pronounced feature of novelty in the design of the patent, most pronounced in fact and made most prominent in the specification of the patent, its description being at the beginning of the specification and in these words:

"The pommel on its rear side falls nearly perpendicularly for some inches, when it is joined by the line forming the profile of the seat. The straight inner side of the pommel (marked *b*) is joined at *c* by the line *C* of the seat."

THE CASE CONCISELY STATED.

As compared with the Granger saddle of the prior art, the design of the patent has two features of difference and no more. One of these is a cantle ("the hind-bow or protuberance of a saddle," Webster) in the shape of a duck's tail, known in the prior art as the "Jenifer cantle," and used in that prior art on saddles of various designs, and put on or left off saddles by all saddle-makers, including the Whitman Saddle Company, as fancy dictates. The other feature of difference is a nearly perpendicular drop at the rear of the pommel described in the patent thus:

"The pommel, on its rear side, falls nearly perpendicularly for some inches."

The pommels of the old art had a drop at this point, notably the Granger saddle, but the design of the patent magnifies and accentuates this drop. Respondents' contention is that the addition of the

his design, which description it is useless to reproduce here, in the absence of the picture whose presence is necessary to make the description plain. The patentee then says: 'I am aware that portions of the curves employed by me have been used in the designing of saddles; but when combined with a longitudinally slotted tree the lines I employ to give the profile form a new design for saddles,, and giving the general idea, in the front, lower, and rear lines, of a sea fowl or vessel modeled upon the same curves, and by these curves and lines giving the impression of lightness, grace, and comfort, that could not as well be conveyed by any others, as the impression of comfort is given by the large amount of bearing surface obtained without undue elevation above the back of the animal, combined with the large seat for the rider, and lightness and grace by the small surface of tree shown in vertical plan, coupled with the form in which it is presented.'

The claim is for: 'The design for a riding saddle, substantially as shown and described.'

The design is one of especial gracefulness and is a quickly recognized, marked improvement in the beauty of its lines and curves upon its predecessors, so much so that it is a new shape, which has a utility of its own, consisting in the adaptation of the saddle to the lines of the horse's back and shoulders, the roominess of its seat, and its ability to give the rider's knees close contact with the horse.

Whether the shape is, in all respects, superior to other shapes is not important.

The patent comes within the clause of Section 4929 of the Revised Statutes which authorizes the issuing a patent to any person who, by his own industry, genius, efforts and expense, has invented and produced 'any new, useful, and original shape or configuration of any article of manufacture.' The new and original shape must also be useful and the utility must be consequent upon the shape. It is not necessary, in this case, to define the minimum of utility which is sufficient, because there was in this design, an obvious utility apart from its beauty. The shape of an article which furnishes added convenience to the user, or which makes the article better adapted, in some respects, to the purposes for which it is used, can properly be said to be useful within the meaning of Section 4929, although the article thus furnished with a new shape could not be the subject of a functional patent for a new or improved manufacture.

The J. S. Sullivan Saddle Tree Company, a corporation in the State of Missouri, is the real defendant in the case and sold to the nominal defendants sundry saddle trees, which they also sold, and which were exact reproductions of the shape which is being manufactured by the plaintiff under this patent. It is said that neither the shape made by the plaintiff or by the actual defendant resembled the picture attached to the specification or followed the description in the patent, and that therefore there was no infringement. The specification says that the pommel, on its rear side, falls nearly per-

pendicularly for some inches, when it is joined by the line forming the profile of the seat, and in the picture the point of junction is an angle, whereas, in the manufactured articles, it is a curve. The difference between the patented and the manufactured shapes is not important enough to justify a serious question in regard to the fact of infringement. There is a substantial sameness in the two designs, as a whole, which would deceive the eye of an ordinary purchaser of manufactured saddles.

The question of patentable novelty is the one upon which the most stress has been laid and which has been exhaustively treated by the defendants. No saddle tree in existence prior to 1878 has been produced which at all resembles the patented shape.

The defendant's position upon the question of patentability is that the shapes of all saddles were altered by manufacturers to suit the requirements of purchasers, and that old shapes if modified by the rejection of existing features and by the substitution therefor of other features which were known before the date of the patent, would be the patented shape. This position is most strongly exhibited in the supposed combination of the Jenifer-McClellan and the Granger saddles, each of which exhibited prior to 1878. It is truly said that the Military Jenifer or the Jenifer-McClellan saddle tree had a high peaked cantle and a high prominent pommel, whereas the Granger tree had a 'cut back' pommel and a low broad cantle, and the argument is that the front half of the Granger and the rear half of the Military-Jenifer made the Whitman without the exercise of invention.

It is true, using language broadly, that the Whitman tree shows prominent features of each of these two trees and united two halves of old trees, but the inference that therefore the product or result of Whitman's study and experiment was destitute of invention, does not follow. A machine may take the legs of one stove and the cap of another and make a new design which has no element of invention, but it does not follow that the result of the thought of a mechanic who has fused together two diverse shapes, which were made upon different principles, so that new lines and curves and a harmonious and novel whole are produced, which possesses a new grace and which has a utility resultant from the new shape, exhibits no invention. This was effected by the patentee and I entertain no doubt that the shape which he produced was entitled to a patent.

Let there be an interlocutory decree for an injunction and an accounting."

APPELLANTS ASSIGN FOR ERROR IN THE COURT BELOW (GENERALLY):

1. Its finding that the patent is valid.
2. Its finding that respondents have infringed.

And (more specifically) the following:

1. It was error for the Circuit Court to base its decision to a degree upon the *utility* of the patented design:

CIRCUIT COURT'S OPINION:

"The design is one of especial gracefulness and is a quickly recognized, marked improvement in the beauty of its lines and curves upon its predecessors, so much so that it is a new shape, which has a utility of its own, consisting in the adaptation of the saddle to the lines of the horse's back and shoulders, the roominess of its seat, and its ability to give the rider's knees close contact with the horse.

Whether the shape is, in all respects, superior to other shapes, is not important.

The patent comes within the clause of Section 4929 of the Revised Statutes which authorizes the issuing a patent to any person who, by his own industry, genius, efforts, and expense, has invented and produced 'any new, useful, and original shape or configuration of any article of manufacture.' The new and original shape must also be useful and the utility must be consequent upon the shape. It is not necessary in this case, to define the minimum of utility which is sufficient, because there was, in this design, an obvious utility apart from its beauty. The shape of an article which furnishes added convenience to the user, or which makes the article better adapted, in some respects, to the purposes for which it is used, can properly be said to be useful within the meaning of Section 4929, although the article thus furnished with a new shape could not be the subject of a functional patent for a new or improved manufacture."

SUPREME COURT'S OPINION:

"The acts of Congress which authorize the grant of patents for designs were plainly intended to give encouragement to the decorative arts. They contemplate not so much utility as appearance, and that, not an abstract impression, or picture, but an aspect given to those objects mentioned in the acts."

* * * *

"And the thing invented or produced, for which a patent is given, is that which gives a peculiar or distinctive appearance to the manufacture, or article to which it may be applied, or to which it gives form. The law manifestly contemplates that giving certain new and original appearances to a manufactured article may enhance its salable value, may enlarge the demand for it, and may be a meritorious service to the public. It therefore proposes to secure for a limited time to the ingenious producer of those appearances the advantages flowing from them. Manifestly the mode in which those appearances are produced has very little, if anything, to do with giving increased salableness to the article. It is the appearance itself which attracts attention and calls out favor or dislike. It is the appearance itself, therefore, no matter by what agency caused, that constitutes mainly, if not entirely, the contribution to the public which the law deems worthy of recompense." (*Gorham Manuf'g Co.* v. *White*, 14 Wall., 511.)

2. It was error for the Circuit Court to say:

"There is a substantial sameness in the two designs, as a whole, which would deceive the eye of an ordinary purchaser of saddles."

When the only evidence of infringement is the *expert* testimony of H. F. Newbury, while Williams, Gleason, and Burdett, all horseback riders, testify, and Freeman, complainant's superintendent, admits, that they would not mistake respondents' saddle for the saddle of the patent, this Supreme Court having said:

"If, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other." (*Gorham Mfg. Co.* v. *White*, 14 Wall., 511.)

3. It was error for the Circuit Court to disregard and make immaterial the most pronounced feature of novelty in the design of the patent, most pronounced in fact and made most prominent in the specification of the patent, its description being at the beginning of the specification and in these words:

"The pommel on its rear side falls nearly perpendicularly for some inches, when it is joined by the line forming the profile of the seat. The straight inner side of the pommel (marked *b*) is joined at *c* by the line *C* of the seat."

THE CASE CONCISELY STATED.

As compared with the Granger saddle of the prior art, the design of the patent has two features of difference and no more. One of these is a cantle ("the hind-bow or protuberance of a saddle," Webster) in the shape of a duck's tail, known in the prior art as the "Jenifer cantle," and used in that prior art on saddles of various designs, and put on or left off saddles by all saddle-makers, including the Whitman Saddle Company, as fancy dictates. The other feature of difference is a nearly perpendicular drop at the rear of the pommel described in the patent thus:

"The pommel, on its rear side, falls nearly perpendicularly for some inches."

The pommels of the old art had a drop at this point, notably the Granger saddle, but the design of the patent magnifies and accentuates this drop. Respondents' contention is that the addition of the

known Jenifer cantle to the known Granger saddle does not constitute patentable design; and this especially in view of its prior attachment to many different saddles; and that if the accentuated drop at the pommel gives patentability to the design, then respondents do not infringe, for they have it not.

MARKETABLE UTILITY.

Complainant seeks to show that the public has largely appreciated the design of the patent in suit, *first*, by showing complainant's sales of saddles bearing that design, and, *second*, by exhibiting testimonials such as the owners of proprietary medicines advertise in the newspapers.

COMPARATIVE SALES.

H. L. Buck's (*complainant's president*) *test.* (Record, page 33.) *Int.* 1. What is your name, age, residence, and occupation? *Ans.* Henry L. Buck; 35 years of age; I reside at Newark, New Jersey; I am president of the Whitman Saddle Company. *Int.* 13. From 1880, when the Whitman Saddle Company was organized, up to the present time, has said company manufactured or put upon the market saddles made under patent for design No. 10,844, like that shown in Complainant's Exhibit Whitman Patent now shown you? *Ans.* It has. *Int.* 15. Can you state about how many saddles containing the said patented design have been sold by the said Whitman Company? *Ans.* About two thousand five hundred.

This, if accepted, shows the sale of 359 saddles a year, for seven years, bearing the design of the patent.

J. S. Sullivan's (*Resp's witness*) *test.* (Record, page 204.) *Int.* 4. How many of any one kind or style of saddle-tree have you made and sold during the seven years last past? *Ans.* Of what is known as the Morgan tree I have made, to the best of my belief, in the last seven years, between two hundred and fifty thousand and three hundred thousand trees.

Jacob Straus' (*Resp's witness*) *test.* (Record, page 158.) *Int.* 13. How many of any one kind of saddles or saddle-trees do you sell in a year? *Ans.* Five hundred dozen or more.

B. A. Bourn's (*Resp's*) *test.* (Record, page 182.) *R. D. Int.* 69. How many of any one style of saddle have you sold in the seven years last past? *Ans.* Of the Morgan varieties, what we would class under that head, about twelve thousand; McClellan about six thousand; side saddles about sixty-five hundred.

J. D. Freeman's (Comp's supt.) test. (Record, page 50.) *Int.* 4. State if you can, approximately, how many saddles were made under your supervision during any ten consecutive years. *Ans.* We made from 1850, when I took charge of Faitoute, Wright & Co.'s, up to 1860, and just before the war, from twenty-two to thirty-two thousand saddles a year.

In view of this testimony, the Whitman Saddle Company's sale of 359 saddles a year, under the stress of an unusual amount of advertising, (set out in detail in the bill of complaint,) fails of showing a degree of public appreciation which aids in establishing patentable novelty.

TESTIMONIALS. The written testimonials sought to be put in evidence are objected to as incompetent. If such papers were competent evidence respondents would call attention to the following which they have offered. (Record, page 162.)

"Washington, D. C., June 9, 1885.

Peters & Calhoun Co.,
Newark, N. J.

Gentlemen:—In reply to your letter of the sixth inst., the Chief of Ordnance directs me to state that the Whitman saddle was recommended by the Cavalry Equipment Board of 1879, and 500 of them were tried in the field, upon his recommendation, by different troops of cavalry, in comparison with the McClellan saddle. This trial did not show any or such superiority of the former over the latter as would justify its substitution for it when we have such a large number of McClellan saddles on hand. The reports upon the above trial show the main defects of the Whitman saddle to have been *want of strength, and tendency to cause sore backs.*

Respectfully,
Your obedient servant,
J. M. Whittemore,
Lieut. Col. of Ordnance.

Washington, D. C., January 29, 1886.

Miller, Morrison & Co.,
30 Warren Street, New York.

Gentlemen:—In reply to your letter of the 27th inst., by directon of the Chief of Ordnance I have to inform you that the Whitman saddle is not the U. S. Army Regulation Saddle. I enclose General Orders No. 73 N. G. O. of 1885, which gives information as to the saddle now adopted as a standard for use in the army.

Respectfully,
Your obedient servant,
J. M. Whittemore,
Lieut. Col. of Ordnance."

Respondents submit that the Circuit Court is contradicted *by the evidence* in saying:

"The design * * is a quickly recognized, marked improvement." That remark must find its basis wholly in the personal opinion of the court.

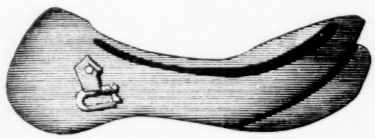
OBSCURATIONS OF THE ISSUE.

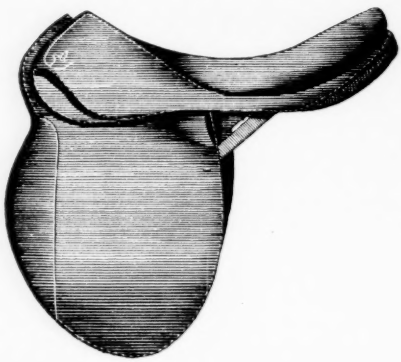
It would seem as though the complainant had sought to obscure the issue. Its questions to witnesses concerning the "Whitman saddle," its suggestions by innuendo that respondents have sold infringing saddles as "Whitman saddles," its complaint that respondents' saddle exhibits are covered with *black* leather instead of some other color, its complaint as to the *cut* of the leather on respondents' saddles, and its complaint that in respondents' saddle exhibits the leather as a rule *fits* to the saddle-tree, are all not only unfounded but seem directly intended to becloud the issue.

"WHITMAN SADDLE" MEANS NOTHING DISTINCTIVE.

H. L. Buck's (Comps's pres't) test. (Record, page 47.) *X-Int.* 53. Have you advertised as Whitman saddles those made on such trees as shown in No. 6, page 33, of Defendant's Identification Exhibit No. 4? *Ans.* We have.

The following are fac-similes of these cuts:





They are destitute of the Jenifer cantle, of the accentuated drop at the rear of the pommel, and, as made up, of the open slot in the seat.

Wm. Hill's (Resps' witness) test. (Record, page 186.) *Int.* 27. Did you formerly work for the Whitman Saddle Company? *Ans.* Yes, sir. *Int.* 37. Did they mark with the date of the design patent in suit here, saddles or the trees thereof such as style 71 at the top of page 18 in Respondents' Exhibit Whitman Catalogue No. 4? *Ans.* Yes, sir. *Int.* 38. Is that style No. 71 a saddle with the central open slot, or a closed seat? *Ans.* Closed seat. *Int.* 39. And were such saddles with closed seats marked with the date of the design patent in suit here, by the Whitman Saddle Company? *Ans.* Yes.

This is a fac-simile of the cut.

This saddle is destitute of the Jenifer cantle, of the accentuated drop, and of the open slot in the seat. Complainant did not, as it could not, deny Hill's testimony in rebuttal.

Geo B. Loring's (Comps' witness) test. (Record, page 25.) *C. Int* 1. How many saddles having different features of construction are known as Whitman saddles? *Ans.* Of genuine Whitman I know of only ladies' and gentlemen's and some with and some without the extension on the cantle.

"Whitman saddle" means a great variety of saddles, including those destitute of all similarity to the design of the patent in suit.

RESPONDENTS' ALLEGED BAD FAITH.

By innuendo rather than by direct allegation, complainant charges respondents with selling as "Whitman saddles" those not made by complainant.

Geo. B. Loring's (Comps' witness) test. (Record, page 24) *Int.* 18. Were all the eleven from Smith, Bourn & Co. of one kind? *Ans.* They were. *Int.* 20. Under what name did you sell them to Winship? *Ans.* They were sold as Whitman. *C. Int.* 8. Were they billed to you by Smith, Bourn & Co., as Whitman saddles? *Ans.* They were not.

This may be bad for complainant's witness. It exonerates respondent's.

B. A. Bourn's (Resp) test. (Record, page 178) *Int.* 26. Of whom did Smith, Bourn & Company purchase the trees that are in the saddles complained of as infringements, provided those saddles are of your manufacture? *Ans.* The J. S. Sullivan Saddle-tree Company. *Int.* 27. By what name do you know such trees? *Ans.* The Park tree. *Int.* 28. How many such Park trees have you ever bought? *Ans.* Thirty-six. We have used twenty-one, the balance are on hand. *Int.* 29. Have you ever sold as a Whitman saddle any saddle not built upon a tree purchased from The Whitman Saddle Company or its predecessor? *Ans.* Never.

Look at "Park" saddle-trees on pages 18–21 of Respondents' Exhibit Whitman Catalogue No. 4, remembering that the presence or absence of a Jenifer cantle is a mere matter of fancy, and then say whether it is not fair for respondents to call their saddles "Park saddles."

W. C. C. Mehlbach, complainant's secretary and treasurer, testifies to visiting The Sullivan Saddle-Tree Co., and having Sullivan offer him a "Whitman" saddle or tree. The testimony of Sullivan, of Louis Wagner (who was with Mehlbach), of James M. Hayes, of Walter Shafer, and of Michael McGrath, (then Secretary of the State of Missouri), shows Mehlbach's testimony to be something worse than a mere mistake.

RESPONDENTS' SADDLES ARE BLACK BECAUSE (1) it is one of the commonest of the old colors, and (2) because sober black has

less tendency to raise color distractions, when considering form, than any other color. The saddle shown in the patent in suit is obviously light colored, and Whitman's rule was to use light colored leather.

J. D. Freeman's (*Comps' supt.*) *test.* Record, page 65.) *C. Int.* 99. What was the color of the leather on the first saddle that Colonel Whitman showed you, as you have testified, in 1878? *Ans.* I think it was stained with turmeric. *C. Int.* 100. Was it black or light-colored? *Ans.* It was pig skin, light before stained. *C. Int.* 101. Was it black? *Ans.* No, sir. *C. Int.* 102. In making saddles under the patent in suit by Col. Whitman and the Whitman Saddle Company, has leather of different colors been used for covering trees? *Ans.* Yes, sir. *C. Int.* 103. Before you ever saw Col. Whitman was leather of different colors used for covering saddle-trees? *Ans.* Russet, hog-skin, black.

RESPONDENTS' CUT OF LEATHER IS OLD, and complainant's patent makes no reference to the cut.

J. D. Freeman's (*Comps' supt.*) *test.* (Record, page 66.) *C. Int.* 111. Previous to the conversation mentioned in your 24th answer Col. Whitman's saddles had been covered so that the covers of the tops of the tail pieces under the cantle were separate pieces from the leather which covered the seat, had they not? *Ans.* Yes. *C. Int.* 112. In Respondents' Exhibit Park Saddle is the leather which covers the seat in one piece with the leather which covers the tops of the tail pieces under the cantle? *Ans.* No. *C. Int.* 113. In Complainant's Exhibits A, C, and D, is the leather which covers the seat in one piece with the leather which covers the tops of the tail pieces under the cantle? *Ans.* In A the seat is of one piece with the extension, is cut where the jockey comes to be seamed in. The jockey is cut in one continuous piece. In D, that is cut in one piece to the corner of the cantle; the crook is one piece front and the jockey is what is called a half jockey. In C, the seat from the peak to the tip end of the cantle, the front, is one continuous piece except the corner of the cantle. The jockey is cut in one piece from the front to the corner of the cantle. *C. Int.* 114. Question repeated. *Ans.* No.

THE LEATHER SHOULD FIT THE TREE. It is the rule.

E. H. Wells' (*Resps' witness*) *test.* (Record, page 173.) *Int.* 23. In covering a tree with leather or hide to make it into a saddle, does or does not the covering as a rule conform closely to the tree? *Ans.* With leather it does; with hide not as close.

B. A. Bourn's (*Resp.*) *test.* (Record, page 178.) *Int.* 21. Is it or not the rule that in covering a tree with leather (excepting pos-

sibly padding underneath for the horse's back) the leather conforms to the tree? *Ans.* It is. *Int.* 22. And in such case, are or not the tree and saddle of substantially the same shape and appearance? *Ans.* They are. *Int.* 23. How is it in this regard when covering with hide? *Ans.* Not so close. *Int.* 24. Does or does not Respondents' Exhibit Hide-covered Muley Tree illustrate the closeness of conformation between tree and covering that is attained as a rule in covering with hide? *Ans.* It does.

Wm. Hill's (*Resps' witness*) *test.* (Record, page 186.) *Int.* 33. In covering saddle-trees with leather, is it or not the rule (aside from any padding that may be used underneath) to have the leather come in contact with the tree throughout and thereby make the leather conform to the shape of the tree? *Ans.* It is. *Int.* 34. Does or does not Respondents' Exhibit Hide-covered Muley Tree illustrate the closeness of contact between hide and tree, that is the rule in covering trees with hide? *Ans.* It does.

R. T. Goodsell's (*Resps' witness*) *test.* (Record, page 194.) *R. D. Int.* 100. In covering saddle-trees with leather, aside from padding or the like, underneath, is it or not the rule that the leather conforms to the tree, except possibly slight filling where the tree has abrupt lines or breaks and so that the tree and the saddle have the same shape and appearance, except in such smoothness and finish as is due to the presence of the leather? *Ans.* It is. *R. D. Int.* 105. Does or not Respondents' Exhibit Hide-covered Muley Tree illustrate the closeness of conformation between tree and saddle, that is the rule when trees are simply covered with hide? *Ans.* It does.

From R. A. Whitman's Design Patent of 1879. (*In evidence.*)

"In the photographic illustration, the saddle-tree is shown, but as *in covering it with skin or leather the form is no more changed than it would be by a coat of paint,* the picture is to all intents and purposes a faithful representation of the configuration shown by me as a new thing for saddles."

From R. A. Whitman's Design Patent of 1881. (*In evidence.*)

"In the photographic illustration an uncovered tree is shown * * the cover when applied leaving its leading features unchanged."

THE PRIOR ART.

The saddle designs of the prior art were of little less than infinite variety. More than a thousand are in evidence.

J. S. Sullivan's (*Resps' witness*) *test.* (Record, page 137.) *Int.* 5. How many different styles of saddles or saddle-trees are or have

you been acquainted with? *Ans.* I presume we have made over a thousand different styles since I have been in business.

H. Ruwart's (*Resps' witness*) *test.* (Record, page 148.) *Int.* 3. How many different styles of saddle-trees have you seen or worked upon? *Ans.* I couldn't say exactly, but I guess a thousand—not less than a thousand during my time, different shapes and styles.

S. Hatheral's (*Resps' witness*) *test.* (Record, page 151.) *Int.* 6. How many different styles of saddles have you known of? *Ans.* I couldn't state positively as to that, but some hundreds.

F. F. Labadie's (*Resps' witness*) *test.* Record, page 156.) *Int.* 7. How many different kinds of saddles or saddle-trees have you seen, first and last? *Ans.* From five to eight hundred styles, and more.

F. Strauz' (*Resps' witness*) *test.* (Record, page 157.) *Int.* 3. In that time how many different styles of saddles and saddle-trees have you known of? *Ans.* With the different variations, probably a thousand different kinds.

W. T. Goodsell's (*Resps' witness*) *test.* (Record, page 162.) *Int.* 3. Prior to 1876, how many different styles of saddles or saddle-trees did you know of in public and common use in this country? *Ans.* There were hundreds of them.

E. H. Wells' (*Resps' witness*) *test.* (Record, page 171.) *Int.* 3. Prior to 1876, of how many different styles of saddles did you know in public and common use in this country? *Ans.* I could not give the number definitely. It would run up into the hundreds, though.

B. A. Bourn's (*Resp.*) *test.* (Record, page 177.) *Int.* 5. Prior to 1876, of how many different styles of saddles or saddle-trees did you know, in public and common use in this country? *Ans.* A good many hundreds.

In the prior art, saddlers were accustomed to add to, subtract from, and vary saddle designs in countless ways.

F. S. Sullivan's (*Resps' witness*) *test.* (Record, page 137.) *Int.* 7. Is it or not customary in the making of saddle-trees and saddles to alter and change the construction, as dictated by the taste or fancy of different persons? *Ans.* Yes, sir. *Int.* 8. To what degree is this customary, is it rarely done or otherwise? *Ans.* Very frequently done, sir.

H. Ruwart's (*Resps' witness*) *test.* (Record, page 148.) *Int.* 4. Is it or not customary for saddle-tree makers to vary the shape and appearance of saddle-trees according to the taste and fancy of customers? *Ans.* Yes, sir.

S. Hatheral's (*Resps' witness*) *test.* (Record, page 151.) *Int.* 7. Was it or not customary for saddle-tree makers to vary the shape and appearance of saddle-trees according to the taste and fancy of purchasers? *Ans.* It was. *Int.* 8. Was this rarely done or often done? *Ans.* Well, it was done more after the war than previous to the war, but it was often done all the time.

J. F. Labadie's (*Resps' witness*) *test.* (Record, page 156.) *Int.* 8. How often have you known of saddle-trees being changed in their construction and appearance to suit the taste of the customers? *Ans.* Very often, owing to the different parts of the country the trees go to; some like them one way, and some like them another; we have to make the trees to suit the trade.

J. Straus' (*Resps' witness*) *test.* (Record, page 158.) *Int.* 12. In your business, as you have followed it, how often have you had occasion to change the construction and outer appearance of trees to suit the taste and fancy of the customers? *Ans.* Quite often.

W. T. Goodsell's (*Resps' witness*) *test.* (Record, page 162.) *Int.* 4. Prior to 1876, was or was it not the custom of saddle-makers and saddle-tree makers to alter the shape and appearance of saddles and saddle-trees to suit the tastes of different customers? *Ans.* It was. *Int.* 5. Was this rarely done or often done? *Ans.* It was an almost every day occurrence.

E. H. Wells' (*Resps' witness*) *test.* (Record, page 171.) *Int.* 4. Prior to 1876 was it or was it not the custom of makers of saddles and saddle-trees to alter the shape and appearance of saddles to suit the tastes of customers? *Ans.* It was. *Int.* 5. How frequently should you say you did that prior to 1876? *Ans.* Well, very frequently.

B. A. Bourn's (*Resp*) *test.* (Record, page 177.) *Int.* 8. During all your connection with the saddle business has it or not been customary for makers of saddle-trees and saddles to alter the shape and appearance of trees and saddles to suit the taste of customers? *Ans.* It has; and also to fit the horses.

Wm. Hills (*Resps' witness*) *test.* (Record, page 184.) *Int.* 3. Prior to 1876, was it or not customary for makers of saddles and trees to alter the shape and appearance of saddles and trees to suit the taste of different customers? *Ans.* It was. *Int.* 4. Was this done rarely or frequently? *Ans.* Often.

The following were old in the prior art:

1. The Granger tree and saddle, (Strauss, Sullivan red, and Sullivan black,) made up both with and without the open slot.

2. The Jenifer tree and saddle (including the Jenifer-McClellan) with open slot and Jenifer cantle.

3. The Jenifer cantle upon a variety of saddles.
4. The open slot in a variety of saddles.

J. S. Sullivan's (Resps' witness) test. (Record, page 138.) *Int.* 9. I show you a photograph of a saddle-tree, (same shown to witness,) who, if you know made the saddle-tree from which that photograph was taken? *Ans.* Yes, sir; I think I made that tree. (Photograph shown to witness is offered in evidence and marked Respondent's Exhibit of Sullivan-Granger tree.) *Int.* 10. Has that tree a name in the trade? *Ans.* Yes, sir. *Int.* 11. What name? *Ans.* The Granger. *Int.* 12. Have you ever made such Granger trees? *Ans.* Yes, sir. *Int.* 13. Since what time have you made and sold such Granger trees? *Ans.* To the best of my recollection we commenced to manufacture Granger trees in 1875 or 1876. *Int.* 15. Have you or not any doubt about it being 1875 or 1876? *Ans.* No, sir; I feel positive it was the latter part of 1875 or the early part of 1876, we commenced making the Granger trees. *Int.* 17. Have you at any time since said 1875 or the early part of 1876, ceased to make and sell such Granger trees in the regular course of trade? *Ans.* No, sir. *Int.* 18. Before you thus made and sold the Granger tree, had you or had you not seen such trees in public use or on sale? *Ans.* Yes, sir, I had. *Int.* 19. How about the size of these Granger trees that you have made and sold in the regular course of trade since 1875 or the early part of 1876? *Ans.* They run from thirteen inches up to eighteen. *Int.* 20. Do these "inches" refer to the length of the saddle-trees? *Ans.* Yes, sir. Some are made broad cantle, and some are made narrow cantle. We made various styles of them to suit customers. *Int.* 21. I show you a photograph of another saddle-tree. (Same shown to witness) I direct your attention to the peaked cantle at the rear end. Are you or are you not familiar with saddle-trees having such peaked cantles? *Ans.* I am to some extent. (Photograph last shown to witness is offered in evidence and the same is marked "Respondent's Exhibit Photo. Jenifer-McClellan Tree.") *Int.* 22. How long have you known of such a peaked cantle upon saddles in public use or on sale? *Ans.* About ever since I have been manufacturing saddle-trees, twelve or thirteen years. In fact I rode on a saddle-tree with that kind of a cantle on it in the army in 1862. *Int.* 23. On how many different kinds or styles of saddles or saddle-trees did you know such a peaked cantle used, say prior to the year 1876? *Ans.* Three, I think. *Int.* 24. Can you state the names of those three kinds? *Ans.* "Military Jenifer," the "Dragoon Tree," and I think a tree called the "Grant Tree," was the other one. *Int.* 26. How early did you make and sell saddle-trees having such peaked cantles? *Ans.* I suppose—I can't tell exactly—I suppose it must have been in 1876

or 1877 I commenced making the trees called the "Military Jenifer." The "Military Jenifer" and this exhibit are one and the same tree. *Int.* 27. When you say "this exhibit," you mean Respondents' Exhibit Photo. of Jenifer-McClellan tree? *Ans.* Yes, sir.

H. Ruart's (*Resps' witness*) *test.* (Record, page 149.) *Int.* 6. How long have you been familiar with such a peaked cantle as is shown on Respondents' Exhibit Photo. of Jenifer-McClellan tree? *Ans.* About twenty years. *Int.* 7. Has such a peaked cantle been in public use all that time? *Ans.* I have seen them since and made them. *Int.* 8. Prior to 1876, on how many different styles of saddles that were in common and public use did you know such a peaked cantle to be used? *Ans.* Three or four different styles. *Int.* 9. What were those three or four different styles called? *Ans* One was called the "Rio Grande." the other the "Ringgold," the "Military Jenifer," and "McClellan." *Int.* 11. Have you or not in the past been familiar with such a saddle-tree as is shown in Respondents' Exhibit Photo. of Sullivan's Granger Tree? *Ans.* I am. *Int.* 12. What is the name by which you know the tree shown in the photo. last mentioned? *Ans.* I know the tree by the name of Granger. *Int.* 13. How long have you known of such Granger trees in public and common use? *Ans.* About twelve years. *Int.* 16. Were such Granger trees made and sold by the J. S. Sullivan Saddle-Tree Company in the regular course of business twelve years ago? *Ans.* Yes, sir. *Int.* 17. Has the J. S. Sullivan Saddle-Tree Company made and sold such Granger trees in the regular course of business ever since? *Ans.* Yes, sir. (Witness shown Respondents' Exhibit Photo. Jenifer-McClellan Tree.) *Int.* 18. How long have you known of trees such as are shown in the photograph I now hand you being in public use and on sale by the J. S. Sullivan Saddle Tree Company? *Ans.* We made that tree in 1876, according to my recollection. *Int.* 19 And ever since? *Ans.* Yes, sir. *Int.* 20. In the regular and ordinary course of business? *Ans.* Yes, sir.

S. Hatheral's (*Resps' witness*) *test.* (Record, page 151.) *Int.* 9. I show you a catalogue of saddle-trees purporting to be issued by Hatheral & Park; by whom, if you know, was that catalogue issued? *Ans.* It was issued by Hatheral & Park, aforesaid. *Int.* 10. How early did you know of such saddle-trees or saddles, in public use or on sale in this country, having such a peaked cantle as is shown in the cut in that catalogue, which is marked "Military Jenifer"? *Ans.* We made those as early as 1868 or 1869, or a little before that; at that time anyway. (Catalogue last referred to is offered in evidence as Respondents' Exhibit "Hatheral & Park's Catalogue.") *Int.* 11. Prior to

1876, on how many different styles of saddles did you know such a peaked cantle to be used? *Ans.* The first one that I have special or actual knowledge of is the Grimsley, which we made as early as 1861. Then I know about this Jenifer; we made large numbers of those; then we have at times, I recollect a French style of tree, and we have made them at various times when they have been required; we made a large number of them for A. Ortmeyer, of Chicago, a style which was called the Alexis. *Int.* 12. How early, in the regular course of trade, did you make and sell the style of saddle-tree which in Hatheral & Park's catalogue is marked "Granger"? *Ans.* We made them from about 1873, to the time we sold out our business, in 1883, we made them continuously in large numbers. *Int.* 13. How early did you issue such a catalogue as this one, Respondents' Exhibit Hatheral & Park's Catalogue? *Ans.* We issued them as early as 1871. *Int.* 14. How early did you issue such a catalogue as this,—Respondents' Exhibit Hatheral & Park's Catalogue,—containing the said Granger cut? *Ans.* Well, we issued them in 1873 and 1875; I am positive that it was in the 1875 number, but I won't state positively about the previous ones.

J. F. Labadie's (*Resps' witness*) *test.* (Record, page 156.) *Int.* 4. How long did you know of a peaked cantle, the same or similar to that on the Military Jenifer, in Respondents' Exhibit Hatheral & Park's Catalogue, in public use on saddles? *Ans.* I first became acquainted with that tree as "Grimsley's Patent Dragoon." At that time two styles of them were made, a large one and a small one; and I have seen another tree in 1875, with the same cantle and a horn, called the "Grant Tree," made by Mr. Blazer in the city of St. Louis. *Int.* 6. What was the date of seeing this cantle on the Grimsley tree? *Ans.* In 1853. And I think it was made long before that. *Int.* 9. How early did you know of a Granger tree? *Ans.* I became familiar with the Granger tree as early as 1875, probably 1874. *Int.* 10. What kind of Granger trees did you see in public use or on sale prior to 1876? *Ans.* Granger trees something like that (pointing to Respondents' Identification Exhibit Z, and also pointing to Respondents' Exhibit Straus-Granger tree.) *Int.* 11. You say "something like that;" what differences were there between those you saw prior to 1876, and those two you have mentioned? *Ans.* I don't see any difference at all; only one man might have this style and another another style of Granger tree. *Int.* 12. Did you not, as a matter of fact, prior to 1876, know both of these styles you have referred to, to be in public use or on sale here in Missouri? *Ans.* Yes, sir. *Int.* 13. Since 1875 or 1874, when you first became acquainted with the Granger tree, has it ever ceased to be regularly

made and sold here in St. Louis? *Ans.* No, sir. It was sold right along.

J. Straus' (*Resps' witness*) *test.* (Record, page 157.) *Int.* 4. How early did you know of there being in public use and on sale in this country, saddles having a peaked cantle similar to that on the Military Jenifer in the Hatheral & Park Catalogue in evidence? *Ans.* Since 1852. *Int.* 5. On how many different styles of saddles, prior to 1876, did you know such a peaked cantle to be used? *Ans.* I know of but two leading ones, that is, the old Grimsley Patent Dragoon tree, and the Jenifer. What few others I have seen since have originated from those two trees named. *Int.* 6. I show you an old tree. It is broken, but never mind the breaks. Did you ever sell saddles made upon such a tree as that (same shown to witness)? *Ans.* Yes, sir. *Int.* 7. How long ago? *Ans.* 1873. (The tree is offered in evidence and marked Respondents' Exhibit Straus-Granger tree.) *Int.* 8. By what name did you know that tree at that time? *Ans.* I called it the Straus-Granger. *Int.* 9. How long did you continue to make and sell saddles on such trees as that? *Ans.* From that time until now; however, I must add here, that I made some changes between this period. *Int.* 10. Did you make and sell saddles on such Granger trees as you have mentioned in the regular course of your business here in St. Louis, from 1873 to the present time? *Ans.* Yes, sir. *Int.* 11. Have you during that period made them of various sizes and lengths? *Ans.* Yes, sir. *Int.* 14. What kind of a tree do you call this Respondents' Identification Exhibit "Z"? *Ans.* That is also a Granger tree.

B. F. Williamson's (*Resps' witness*) *test.* (Record, page 158.) *Int.* 4. Have you ever before to-day seen in public use or on sale in St. Louis, such a saddle-tree as I now hand to you? (Straus-Granger.) *Ans.* I have. *Int.* 5. When first and where? *Ans.* I think in 1873 or 1874, at Jacob Straus Company, 415 North Main street, St. Louis, Missouri. *Int.* 7. Do you know who made the first one you ever saw? *Ans.* I do not. *Int.* 8. Was it made by Straus, your employer, or sent there? *Ans.* I can't answer that question. *Int.* 9. What is the name of that tree? *Ans.* "Canvas Granger" is what we usually call it. *Int* 10. Since you first saw such a Granger tree have they ever ceased to be on sale and in public use here in St. Louis? *Ans.* Not to my knowledge. *Int.* 11. Have saddles been regularly made on such Granger trees and sold here in St. Louis ever since the time you saw the first one as you state? *Ans.* Yes, sir, they have. *C. Int.* 1. You have stated that you have seen the exhibit called the Sullivan's Granger tree made up into saddles; into how many shapes of saddles do you know of this tree being made up? *Ans.* That is a little diffi-

cult to answer; every shop has its peculiar style. *C. Int.* 7. Is it always covered and quilted? *Ans.* Not always. *C. Int* 8. How is it covered when not so covered? *Ans.* With plain leather. *C. Int.* 9. All over the seat? *Ans.* All over. *R. D. Int.* 2. Have you in years past seen different kinds of saddles made up, having a similar lengthwise slot, and that slot left open? *Ans.* Yes, sir. *R. D. Int.* 3. Is that the way of making up the McClellan saddle generally? *Ans.* Yes sir. *R. D. Int.* 4. Has that been generally the way of making up the Princess saddle? *Ans.* Yes, sir. *R. D. Int.* 5. Is that the way of making up the Military Jenifer saddle? *Ans.* All that I have ever made up are made up that way.

W. T. Goodsell's (*Resps' witness*) *test.* (Record, page 163.) *Int.* 6. What is the name of the cantle on Respondents' Exhibit Whitman saddle? *Ans.* What I have always called a "Jenifer Cantle;" have always heard it called so. *Int.* 7. How early did you know of the saddles in public and common use in this country having such Jenifer cantles? *Ans.* In the 1860's. I think it was about 1865 that I first saw one. That is as near as I can place it. *Int.* 8. Prior to 1876, how many different styles of saddles in public and common use in this country having such Jenifer cantles did you know of? *Ans.* Several styles. *Int.* 9. Name such of them as you can think of. *Ans.* The Grimsley Army tree; what was called the Cuban side tree, and the Cuban man tree; then there was what was called the Hussar tree—it was originally made in France, but the trees I speak of were made in this country. *Int.* 11. Prior to 1876, did you or not know of saddles, in public and common use in this country, having an open longitudinal slot similar to those in Respondents' Exhibit Slotted Kilgour Saddle, and Respondents' Exhibit Whitman Saddle? *Ans.* I did. *Int.* 12. On how many different styles of saddles did you know such central slots thus used prior to 1876? *Ans.* I knew of several. *Int.* 13. Name such as you can think of. *Ans.* The Morgans, Princess, Shackleford, and McClellan, and the Jenifer. I don't think of any other just now. *Int.* 14 Were you an inspector of saddles during the civil war from 1861 to 1865? *Ans.* Yes, sir. A Government inspector at the Ordinance Office, Worth street, New York City. *Int.* 15. During that inspectorship did saddles come under your inspection having such central slots? *Ans.* Yes, sir. *Int.* 16. In small or large numbers? *Ans.* Large numbers. *Int.* 17. How early, if at all, did you know of such saddle-trees as Respondents' Exhibit Jenifer-McClellan Tree in public and common use in this country? *Ans* That tree as a Jenifer-McClellan I do not know very long; I should call it a Jenifer. *Int.* 18. Under whatever name you have known it, how early did you know such trees to be in public and common use in this country? *Ans.* Well, I have known it anywheres

from fifteen to twenty years. *C. Int.* 30. You have spoken in your direct testimony of certain different styles of saddles, namely the Muley, the Kilgour, the Granger, the Jenifer, and the Whitman, and the Park. Now prior to 1876, were you engaged in making any of these styles of saddles, and, if so, state which of the said saddles. *Ans.* I superintended the making of the whole of the saddles mentioned there excepting the Whitman. *C. Int.* 31. Don't you want to except the Park, also? *Ans.* Certainly, I except the Park. *C. Int.* 56. What year did you first see a Granger style of saddle-tree? *Ans.* To the best of my knowledge and belief I saw them all previous to 1870. Previous to 1870 or 1872. I have but one way of placing it. I have a particular circumstance which fixes that date. Il eft the employ of S. H. Condit, May 31, 1872, and I saw those trees before I left his employ, and that is the only way I have of placing it. (Page 194) *R. D. Int.* 97. As regards the Granger saddles which you testify that you knew of prior to 1875, were they or were they not made up with the central slot left open? *Ans.* My impression is that they were left open. *R. D. Int.* 99. Disregarding the mode of putting on the strapping, how did they differ, if at all, from Respondents' Exhibit Slotted Granger Saddle? *Ans.* There was little or no difference.

E. H. Wells' (*Resps' witness*) *test.* (Record, page 172.) *Int.* 6. By what name or names have you known the kind of cantles on the saddle which I show you (saddle shown to witness)? *Ans.* The Hussar, and the Jenifer, and one other cantle. I have really forgotten the name. (Saddle shown to witness is offered in evidence and marked Respondents' Exhibit Jenifer-McClellan Saddle H. E. T. Ex) *Int.* 7. Prior to 1876, how many different styles of saddles in public and common use in this country did you know of, having the kind of cantle which is on this saddle which we call "Respondents' Exhibit Jenifer-McClellan Saddle"? *Ans.* There is only three that I have known. Of course we made a different kind of saddle on the same tree; that runs into a sharp point. I can't tell how many—quite a number. *Int.* 9. Of how many different styles of saddles in public and common use in this country, prior to 1876, did you know that had the central slot left open as in "Respondents' Exhibit Jenifer-McClellan Saddle"? *Ans.* I could not give the definite number,—there were quite a lot,—I should say five or six. *Int.* 10. Name such of them as you can remember. *Ans.* The McClellan, the Shackleford, the Jenifer.—two styles of Jenifer,—the Princess, and a Morgan tree. Those I recollect.

B. A. Bourn's (*Resp*) *test.* (Record, page 177.) *Int.* 9. By what name do you know the shape of the cantle that is on Respondents' Exhibit Whitman Saddle? *Ans.* The Jenifer cantle; also as the Hussar cantle. *Int.* 10. Prior to 1876, and speak-

ing within your own knowledge, on what different styles of saddles, in public and common use in this country, were such Jenifer cantles used? *Ans.* They were also used on the Hussar saddles, used on the Jenifer saddles, used on the Grimsley saddle, and also could be ordered on any tree we wanted. *Int.* 11. How far back does such use of the Jenifer cantle extend? *Ans.* To 1864 or 1865. *Int.* 12. Prior to 1876, and speaking within your own knowledge, how many different styles of saddles, in public and common use in this country, had the central open slot, as in Respondents' Exhibit Whitman Saddle? *Ans.* We have made the Kilgour saddle with the open slot; we have made the Shackelford saddle with the open slot; we have made the McClellan saddle with the open slot; we have made the Princess and the Muley-Morgan. *Int.* 18. Have you in the past made and sold regularly in your trade, saddles the same as Respondents' Exhibit Jenifer-McClellan Saddle; never mind the trappings? *Ans.* Yes, sir. *Int.* 19. How far back? *Ans.* 1868. *Int.* 20. Have you regularly made and sold them ever since? *Ans.* When called for and ordered; there is no great sale.

J. D. Freeman's (*Comps' Supt.*) *test.* (Record, page 61) *C. Int.* 61. Prior to 1878, of how many different kinds or styles of saddles did you know having an open slot similar to that in Respondents' Exhibit Jenifer-McClellan Saddle? *Ans.* I never knew only the McClellan and the Union McClellan and the Jenifer. *C. Int.* 63. Prior to 1878, of how many different kinds or styles of saddles did you know having a peaked cantle similar to that on the patent to Walter H. Jenifer, of June 26, 1860? (Patent shown to witness.) *Ans.* We call that the Jenifer. That was the only one that comes anywhere near to this drawing. *C. Int.* 64. Prior to 1878, of how many different kinds or styles of saddles did you know having peaked cantles? *Ans.* The French Hussar for one, the English Dragoon saddle, or Cavalry saddle. That is all except the Union McClellan, the Jenifer make at the present time. *C. Int.* 124. Prior to 1878, you knew of the Union McClellan tree you speak of in shape much like the Princess of Hatheral & Park's Catalogue covered with hog skin, the central slot left open and the hog skin in substantially direct contact with the tree; is that correct? *Ans.* As I said before, the hog skin is stitched fast down on the tree and the under bar sewed fast to it. *C. Int.* 125. Last question repeated. *Ans.* I said yes. *C. Int.* 127. How long have you known of cuts like Morgan-Muley in Respondents' Exhibit Hatheral & Park's Catalogue? *Ans.* I have known of Muley-Morgan about fifteen years. *C. Int.* 171. What is the use or purpose or function of the peak on the cantle as shown in the patent in suit? *Ans.* As near as I understand the intention of it it was to put a military valise under there at

the back part and keep it from striking the man's back. *C. Int.* 172. So far as you know that was the invention of Walter H. Jenifer as set out in his patent of June 26, 1860, was it not? *Ans.* That was a claim made at that time. *C. Int.* 184. The Jenifer patent of June 26, 1860, shows an unstuffed seat, a central open slot in the seat, and a peaked cantle, does it not? *Ans.* It does.

H. A. Winship's (*Comps' witness*) *test.* (Record page 23.) *C. Int.* 15. How old is the Jenifer in the trade? *Ans.* It first made its appearance during the war. The first I ever saw of it was about 1862 or 1863, *C. Int.* 16. Did that Jenifer saddle of 1862-3 have a tail or cantle at the rear part? *Ans.* It did.

G. B. Loring's (*Comps' witness*) *test.* (Record, page 25.) *C. Int.* 14. What substantial difference do you see between the rear half of saddles Complainants' Exhibits A and C, and the rear half of the McClellan? *Ans.* As I remember the McClellan I do not see any difference except the extension on the cantle. *C. Int.* 15. How old is the McClellan to the trade? *Ans.* About twenty-five years. *C. Int.* 16. How old is such an extension on the cantle to your knowledge? *Ans.* I should think about twelve years.

H. M. Van Ness' (*Comps' witness*) *test.*) (Record, page 77.) *C. Int.* 38. Did C. H. Jacobus have more or less of the Granger trees on hand at different times when you were there? *Ans.* He had the Granger tree there. *C. Int.* 39 Did he have the Granger tree there prior to 1878? *Ans.* Yes, sir.

L. Cunningham's (*Comps' witness*) *test.* (Record, page 79.) Int 7. While you were at Condit's were any saddles manufactured there which were known as and called Granger saddles? *Ans.* They were not known until about 1872. As near as I can recollect it was about 1872 before the Granger saddle was introduced. *Int.* 27. At the time that you first saw the Whitman saddle were you familiar with what is known in the market as the Kilgour saddle, the Muley saddle, the McClellan saddle, the Granger saddle, and the Jenifer saddle? *Ans.* I was acquainted with the Muley, the Kilgour, and the McClellan. The Jenifer I was not acquainted with. The Granger I did not see until 1872. *Int.* 28. Were you acquainted, at the time you first saw the Whitman saddle, with any saddle having a peaked cantle like or similar to that shown upon Complainants' Exhibit Marked for Identification W? *Ans.* It was what they call the Hussar cantle, it ran up into a sharp point. The third saddle from the left shown on the upper line in Respondents' Exhibit A, Smith, Bourn & Company's trees, is a Hussar saddle. *C. Int.* 138. Prior to 1878 when saddles were made up with the central slot left open, the leather covering was sub-

stantially in direct contact with the tree without setting or snowing, was it not? *Ans.* It was, all McClellan saddles made up for the army had slots left open.

C. Rademacher's (*Comps' witness*) *test.* (Record, page 91.) *Int.* 11. Before 1878 did you make saddle-trees having peaked cantles? *Ans.* Yes, sir. *Int.* 12. What were they called? *Ans.* The Jenifer. *Int.* 13. Prior to 1878 did you make saddles having a central open slot lengthwise of the saddle, and what were their names? *Ans.* Yes; they called them the Boston-Kilgour. Only that and the McClellan, I made some Jenifers with open seats covered with hog skin. I made them after the war. *Int.* 14. How was it with the Kilgours and the Muleys which you made; were they with open or closed seats? *Ans.* I made the Boston-Kilgour with open seats. I never made any Muleys with open seats. *Int.* 35. Before 1878 were you acquainted with a saddle known as the Granger saddle? *Ans.* Yes, I have made them. *Int.* 37. Could you tell the form of the tree upon which you made these Granger saddles if you should see it now? *Ans.* I think I could. *Int.* 38. Will you look over the saddles or saddle-trees here present and pick out a tree which most nearly resembles the trees which you used in making the Granger saddles which you have referred to? *Ans.* That is the tree. (Witness designates Respondents' Exhibit Sullivan Granger tree.) *C. Int.* 71. How did the Jenifer saddle which you knew before 1878 correspond with Respondents' Exhibit Jenifer-McClellan Saddle? *Ans.* That is about the same thing except that the cantle slopes back a little more than this I knew of.

P. J. Vogel's (*Comps' witness*) *test*) (Record, page 98.) *Int.* 3. What styles of saddles did you make prior to 1878, and by what names were they known in the market? Give the names of some of the more important ones. *Ans.* I made English saddles, Morgan saddles, both Muley and horn saddles, Beauregard saddles. There are so many I don't know as I can mention them all. Some were called Mexican, some California, some Texas. I made Kilgours. I made the McClellan saddles and the Jenifer.

Wm. Hill's (*Resps' witness*) *test.* (Record, page 192.) *C. Int.* 80. Was the Granger tree, with which yon were acquainted from about 1873 to 1878, similar to the tree in the saddle marked Respondentss' Exhibit Slotted Granger Saddle, or did it compare more closely with Respondents' Exhibit Straus-Granger Tree? *Ans.* In my opinion it compares most nearly to Respondents' Exhibit Sullivan Black Granger Tree, but not exactly. At the point on the front end of the tree Respondents' Exhibit Sullivan Black Granger Tree, which I have notched with a knife, it ought to be about a quarter of an inch fuller, to the best of my knowledge and recollection.

Stipulation. (Record, page 142.)

"It is also stipulated between the parties to this cause that the saddle-trees shown on two photographs marked respectively 'Respondents' Exhibit Photo. of Muley Tree,' and 'Respondents Exhibit Photo. of Kilgour Tree,' were in public use and sale in this country prior to the time that Royal E. Whitman produced the design described and claimed in complainant's patent in suit."

Stipulation. (Record, page 148.)

"It is hereby stipulated by and between the parties to this cause that prior to the time when Royal E. Whitman produced the design described and claimed in the complainant's patent in suit, there were in public use and on sale in this country for saddle making, saddle-trees the same as Respondents' Exhibit Straus-Granger Tree, and the same as shown in the cut entitled 'Granger Canvassed,' No. 230, page 70, in the catalogue of the J. S. Sullivan Saddle-Tree Company, which is offered in evidence and marked Respondents' Exhibit Sullivan's Catalogue."

(Record, page 161.)

"Respondents' counsel offers in evidence copy of the specification and drawing of W. H. Jenifer's patent on saddle dated June 26, 1860, No. 28,867, and same is marked Respondents' Exhibit Jenifer Patent of 1860."

(Record, page 204.)

"Respondents' counsel offers in evidence a certified duplicate of the model pertaining to the application on which issued the patent to Walter H. Jenifer, No. 28,867, dated June 26, 1860, and said model is marked Respondents' Exhibit Jenifer Patent Model."

To recapitulate: These propositions of fact may be taken as established.

First. The saddle designs of the prior art were of practically infinite variety. More than a thousand are in evidence.

Second. In the prior art saddlers were accustomed to add to, subtract from, and vary saddle designs in countless ways.

Third. These were old in the prior art,—

1. The Granger tree and saddle, (Straus, Sullivan red, and Sullivan black,) made up with and without the open slot.
2. The Jenifer tree and saddle (including the Jenifer-McClellan) with open slot and Jenifer cantle.
3. The Jenifer cantle upon a variety of saddles.
4. The open slot in a variety of saddles.

THE SADDLE OF THE PATENT IN SUIT COMPARED WITH THE PRIOR ART.

Aside from the accentuated drop at the rear of the pommel, the saddle of the patent in suit is in every matter of substance the same as the old Granger saddle with the old Jenifer cantle added thereto. Disregard Whitman's accentuated drop at the rear of the pommel and the patent in suit, neither by words nor illustration, points out wherein its saddle differs in a single feature from the old Granger saddle with the old Jenifer cantle added thereto.

G. B. Loring's (*Comp's witness*) *test.* (Record, page 25.) *C. Int.* 14. What substantial difference do you see between the rear half of saddles Exhibits A and C, and the rear half of a McClellan saddle? *Ans.* As I remember the McClellan, I don't see any difference, except the extension on the cantle. *C. Int.* 15. How old is the McClellan to the trade, to your knowledge? *Ans.* About twenty-five years. *C. Int.* 16. How old is such an extension on the cantle to the trade, to your knowledge? *Ans.* I should think about twelve years. *C. Int.* 17. Are you acquainted with the Granger saddle? *Ans.* Not by that name. *C. Int.* 18. Will you look at the cut of a Granger saddle, in the little book I now hand you, and say what substantial difference, if any, there would be between a saddle made up on that tree and these saddles, Exhibits A and C? *Ans.* As near as I could tell from the cut, all the difference I see is the extension on the cantle. *C. Int.* 19. Is there or not, any substantial difference in the front half of Exhibits A and C, as compared with the like half of saddles known to you in the trade fifteen or sixteen years ago? *Ans.* There were saddles very similar to these at that time.

J. D. Freeman's (*Comp's supt.*) *test.* (Record, page 72.) *C. Int.* 182. What, if anything, do you find in the specification or photograph of the patent in suit to tell you what length in inches or what height in inches or what breadth in inches any of the parts must be in order to embody the design attempted to be patented in that patent? (Respondents' counsel gives witness the specification and drawing of the patent in suit for examination, and witness examines same.) *Ans.* I see nothing in this. I don't know what this is. All I ever knew about them was making the trees seventeen inches as he made them. This gives him the privilege of making them longer or shorter as they please. *C. Int.* 183. You mean by "this" as used in your last answer the printed matter which I handed you and you exam-

ined, do you not? *Ans.* Yes, sir. There is nothing in that paper to show anything.

FOOT NOTE.

"SETTING AND SNOWING."

Complainant will evidently attempt to maintain (1) that it is not enough to show that the Granger *trees* were known in the prior art; (2) that trees having open slots are sometimes made up with the slot covered, and when so covered are sometimes "set or snowed," that is padded on the top, thereby somewhat changing the shape and appearance; (3) that the Peters and Calhoun Company so covered its Granger trees; and that a Granger saddle thus made up is not of the same design as the Whitman design in the patent in suit.

We explain. The home of the Granger saddle is in the west. The east knows little about the Granger saddle. In view of the well-known rule that the tree is almost invariably, the same in shape and form as the saddle which results from covering it, respondents did not dream of any such pretence on complainants' part, while taking the St. Louis testimony. It was not until the last St. Louis witness (B. F. Williamson) was being examined that any such pretence on complainants' part became evident. It was then too late to go into this matter, but Williamson made it perfectly plain that the Granger saddle of the prior art was sometimes made up without "setting" or "snowing."

B. F. Williamson's (*Resps' witness test.*) (Record, page 159.) *C. Int.* 7. Is it (the Granger saddle) always made covered and quilted? *Ans.* Not always. *C. Int.* 8. How is it covered when not so covered? *Ans.* With plain leather.

This is testimony evoked by complainant and is not contradicted. It establishes the fact that Granger saddle-trees of the prior art were made up or covered, without "setting" or "snowing;" such Granger saddles were, of course, exactly the same in form and appearance as the Granger trees except that the leather covered up the slot.

THE OPEN SLOT.

At this point complainant may interpose the objection that we have not shown that the Granger saddles were made up with the central slot left open. To this we say—

First. We have so shown.

W. T. Goodsell's (*Resps' witness*) *test.* (Record, page 194.) *R. D. Int.* 97. As regards the Granger saddles which you testify that you know of prior to 1876, were they or were they not made up with the central slot left open? *Ans.* My impression is that they were left open. *R. D. Int.* 98. Then how did they differ, if at all, in shape and appearance from from Respondents' Exhibit Slotted Granger Saddle? *Ans.* The great difference was in the mode of putting on the strappings. *R. D. Int.* 99. Disregarding the mode of putting on the strappings, how did they differ, if at all, from Respondents' Exhibit Slotted Granger Soddle? *Ans.* There was little or no difference.

Second. Whether or not the slot was left open in the Granger saddles is an immaterial matter. The patent in suit is not so limited; we could not avoid infringement simply by covering the slot. The *profile* is what Whit-

It is submitted that—

To add the known Jenifer cantle to the known Granger saddle—especially in view of the fact that it was common to put this cantle on or leave it off from saddles of various designs—did not involve genius or invention and did not produce patentable design.

Cases.

A patent in suit was that of H. H. Paine, No. 13,405, dated November 14, 1882, for design for chair. The Circuit Court of Apeals for the third circuit was the court. It said: "The first and leading claim is as follows: '(1) The improved design for common round bow-back chairs, consisting in the upper part of the bow and rounds provided with a sheet of suitable material, as wood, bent to conform to the curvature of said bow-back and rounds, leaving the rounds between said sheet and seat exposed, substantially as and for the purpose specified.' * * * *

"It appears that prior to 1882, Gardner & Co., manufactured and sold in the city of New York, veneers, chairs, and settees. Their illustrative catalogue, issued and distributed in June, 1882, is an exhibit in the case, and it is shown that the cuts therein contained are true representations of the chairs which they manufactured and sold long before the date of Paine's alleged invention. Those chairs were of different forms, styles, and sizes. The variety was great. Some of the chairs had curved backs to conform to the shape of the human body. The chairs were provided with perforated veneer seats. They also had pieces of perforated veneer, of various shapes and of ornamental appearance, fastened by nails to the bocks of the chairs, and in the instances where the backs were curved the back pieces of veneer were were fitted so as to canform to the curvatures. Sometimes the veneer back was continuous with the seat, an unbroken piece of perforated veneer being used for the purpose. In other

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man states to be the material thing.

Third. The open slot being old in a variety of saddles, there is nothing approaching patentable novelty in making up the Granger tree with the central slot left open as it is in the tree. Jonathan D. Freeman, the superintendent of complainants' factory, expressly admits that the presence or absence of the open slot does not make any difference in the design of the saddle.

J. D. Freeman's (Comp's Supt.) test. (Record, page 64.) *C. Int.* 89. In your opinion is the design of the patent in suit materially changed by the presence or absence of the central open slot in the seat? *Ans.* Not materially, no.

instances the perforated veneer back piece and the seat piece were separate.

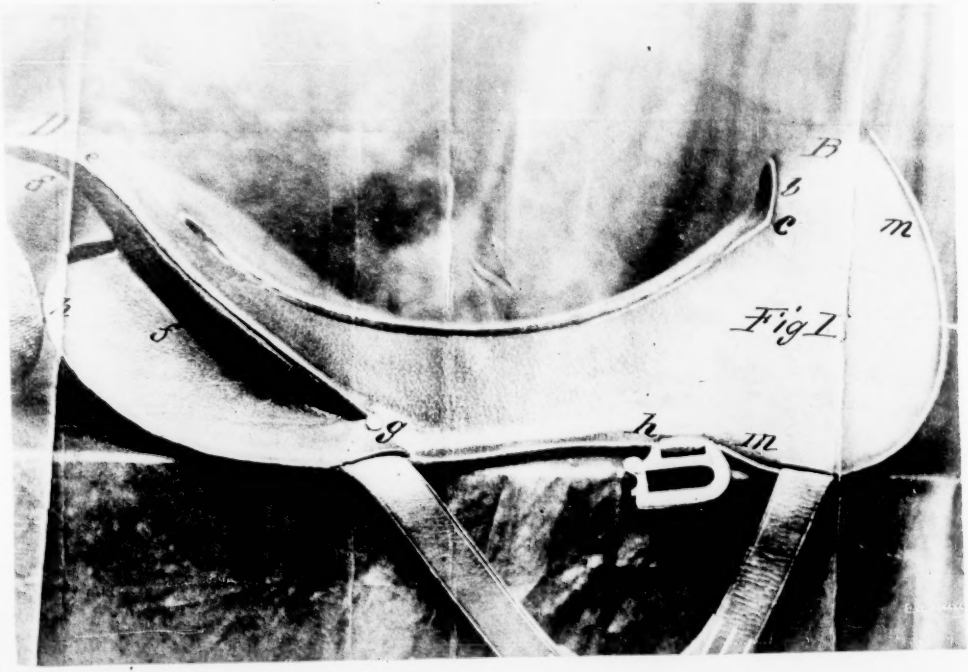
"Now, it is true that among the Gardner illustrations, we do not find the common bow-backed chair; but everything else disclosed by Paine's patent is there to be seen. However, the bow-backed chair—that is, a chair having a continuous piece bent to form the sides and top of the back, both ends being fastened in the seat—was old. Did it, then, in view of what had already been done, require inventive genius, of any order, to apply to the curved back of such a chair a piece of perforated veneer or sheet of other flexible material? The court below rules that it did not, and in that judgment we entirely concur." *Paine* v. *Snowden*, 50 Fed. Rep., 776; Acheson, 1892.

By the court: "Here the shape is a common one in many articles of manufacture and its application to a reel can not fairly be said to be the result of industry, genius, effort, or expense. * * Its selection can hardly be said to be the result of effort even. It was simply an arbitrary chance selection of one of many well known shapes all equally well adapted to the purpose. To hold that such an application of a common form can be secured by letters patent would be giving to the act of 1861 a construction broader than I am willing to give it." *Wooster* v. *Crane*, 2 Fisher's Patent Cases, 583; Benedict, 1865.

By the court: "All that has been done is to place these distinct and well-known ornaments, one above the other, without the production of any such combined effect as to entitle the whole to be treated as a new and original ornament. No new ornament has in fact been produced." *Simpson* v. *Davis*, 12 Fed. Rep., 44; Benedict, 1882.

By the court: "If all that the patentees did was to take the legs of the Smith stove, the base of the light-house, the ash-pit and mica section of the Smith stove, the reservoir and top of the American, and the urn of the Oriental and join them together, it is also clear that they did nothing to entitle themselves to a patent, or if they did no more than to join them together with such adaptations as would be made by the exercise of the ordinary skill of workmen of that trade, probably they did not." *Perry* v. *Starrit*, 14 O. G., 599; Wheeler, 1878.

Figure 1 of Patent in Suit.



Jenifer - McClellan

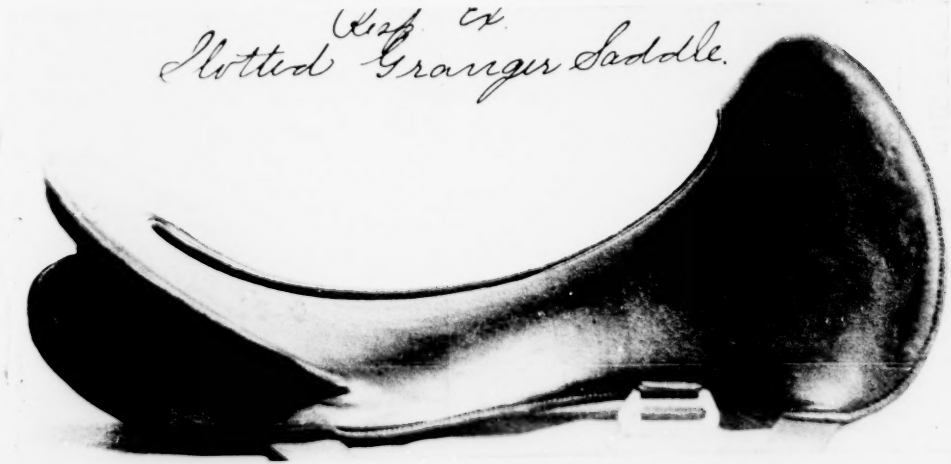
Rear half.

Slotted Granger

Front half.

Wrf cx

Slotted Granger Saddle.



The patent in suit was a design patent for a provision or cheese safe, and the claim thereof was: "As a design for a cheese safe the rectangular case shown having two vertical panels on each wheel, the molded top *A* and the molded base *A'*." Thereof the court said: "The law applicable to this class of patents does not materially differ from that in cases of mechanical patents and the regulations and provisions which apply to the combination and production of patents for inventions and discoveries * apply to patents for designs. The same general principles of construction extend to both to entitle the party to the benefit of the act; in either case there must be originality and the exercise of the inventive faculty. In one there must be novelty and utility, in the other originality and beauty. Mere mechanical skill is insufficient; there must be something akin to genius—the effort of the brain as well as of the hands. The application of old devices and forms to new purposes even if useful and beautiful in their new role is not invention. If the combination of old designs be patentable at all, of which I have some doubt, the combination must be such as to produce a new appearance. If the effect produced be simply the aggregation of familiar designs it will not be patentable. * Apply these regulations to the case under consideration. Rectangular safes finished similar to the complainants' covered with wire cloth have been made and sold many years. When constructed of large size each side was divided into panels by vertical slide. When the smaller size was made, as the difference in size would not be patentable, so to divide each side into panels is none the more so. The only novelty then of this patent is the use of the ogee molding about the top and bottom; and the combination of this with the panelled sides is claimed as complainants' invention. Molding of this description, however, have been used for centuries, and applied not only by way of ornament in architecture, but to articles of furniture and the decoration of interiors. The embelishment of a provision safe with this ancient design is simply the addition of a well-known ornament to a new purpose. The result is pleasing in appearance, but not entitled to the protection of the patent laws, as novel or original. * * While the patentee showed some taste in the manufacture of this article, and while it may have become popular and valuable to him, it does not seem to me to possess the originality without which no manufacture can be patentable." *Northrop* v. *Adams*, 2 Bann. & Ard., 567; Brown, 1877.

To the same effect see—

Pratt *v.* Rosenfield, 18 Blach., 234; Wheeler, 1880.
Osborn *v.* Judd, 29 Feb. Rep., 96: Shipman, 1886.
Crocker *v.* Cutter Tower Co., 29 Feb. Rep., 456. Colt, 1886.

By the Court: "It is not novelty which will sustain a patent to transfer to rubber or to a rubber mat, an effect or an impression to the eye which has been produced upon other materials. * * The design of this patent is not new, unless it embodies a new impression or effect produced by an arrangement or configuration of lines which introduces new elements of color or form." *N. Y. B. & P. Co.* v. *N. J. C. S. & R. Co.*, 30 Fed. Rep., 785; Wallace, 1887.

THE SHARP POMMEL DROP IS MATERIAL TO THE PATENTED DESIGN.

The specification of the patent in suit thus describes the accentuated drop at the rear of the pommel:

"The pommel, on its rear side, falls nearly perpendicularly for some inches, when it is joined by the line forming the profile of the seat. The straight inner side of the pommel (marked *b*) is joined at *c* by the line *C* of the seat."

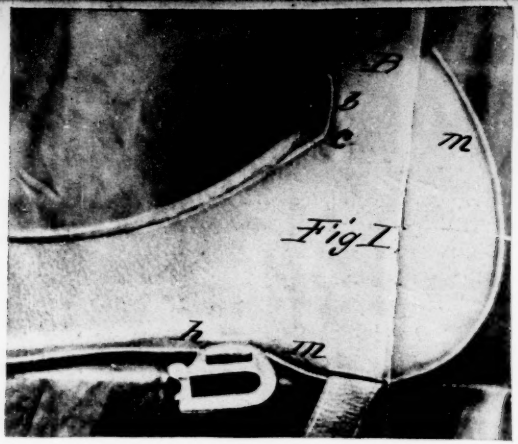
This conformation is thus referred to by Whitman in his later saddle design patent, No. 12,196, of March 22, 1881, which is in evidence.

"Heretofore saddles have been made which presented * * a high pommel of peculiar form * * as shown in the design for saddle for which patent was granted me September 24, 1878, No. 10,844" (the patent now in suit.)

That the "peculiar form" thus referred to resides in the accentuated drop at the rear of the pommel and not in the shape of the front end of the pommel is shown by the following quotation from the patent in suit, wherein Whitman states that the shape of the front end of the pommel is old:

"The line from the front of the pommel B inclines outward for some distance in a nearly straight line *m* before being run to the rear, * * the outline given by the line *m* from the pommel being the general form of the English saddle-tree known as the 'cut back.'"

In Respondents' Exhibit Whitman Catalogue No. 1, which was put out by Whitman before the Whitman Saddle Company succeeded to his business, the emphasis is duly laid on the accentuated drop at



Patent
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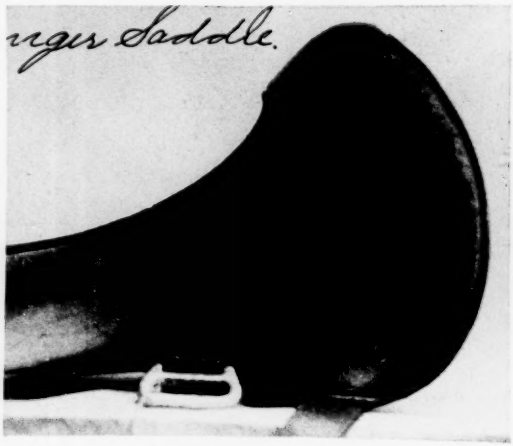
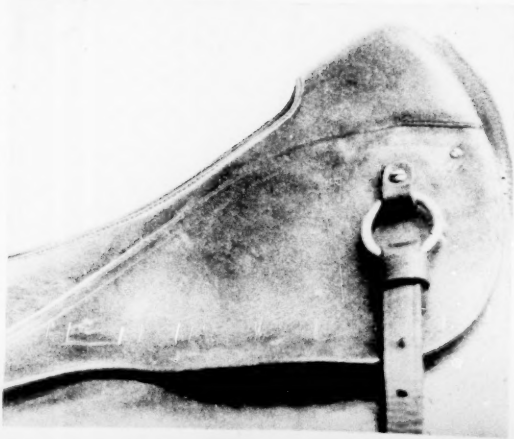
Suit.



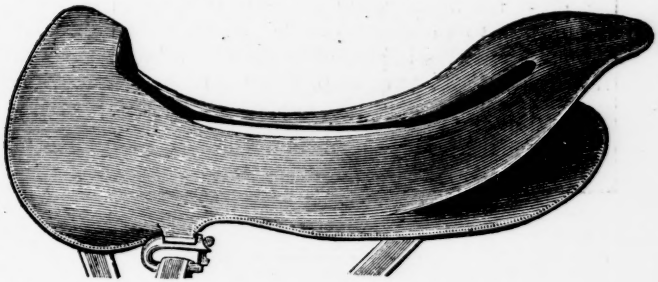
Slotted
Granger.



Saddle
Complained
of.

the rear of the pommel. See, for instance, "Officer's Saddle" on page 5, and "Farmer's Saddle," on page 9.

FAC SIMILE OF CUT OF "OFFICER'S SADDLE," WHITMAN CATALOGUE, NO. 1.



It is submitted that—

The accentuated drop at the rear of the pommel is an essential element of the design of the patent in suit.

RESPONDENTS' SADDLES DO NOT INFRINGE, BECAUSE THEY HAVE NOT THE ACCENTUATED POMMEL-DROP

This is a proposition the soundness of which the court can be satisfied of by its own eyesight. Respondents' saddles have a slight curved drop at the rear of the pommel, like many saddles of the prior art—the Granger saddle, for instance—but they have not Whitman's accentuated drop, one which Whitman says in the patent in suit "falls nearly perpendicularly several inches," and one which he then says has a "*straight* inner side."

J. D. Freeman's (Comps' Supt.) test. (Record, page 75.) *C. Int* 189. Then as regards the part immediately back of the pommel, is there a radical and material difference between Respondents' Exhibit Whitman Saddle and Complainants' Exhibit A? *Ans.* There is a material difference there.

NO EVIDENCE OF INFRINGEMENT IS OFFERED. COMPETENT EVIDENCE IS OFFERED TO SHOW NO INFRINGEMENT.

The only evidence offered by complainant to show infringement is that of Henry F. Newbury, who qualified and testified as a *mechanical expert*, and it is not competent, for this court has said:

"The only remaining question upon this part of the case is, whether it is essential that the appearance should be the same to the eye

of an expert. The court below was of opinion that the test of a patent for a design is not in the eye of an ordinary observer. * * * With this we cannot concur. * * We hold, therefore, that if, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other." *Gorham Company* v. *White*, 14 Wall., 511; Sup. Ct., 1871.

Complainant may contend that the testimony of Henry A. Winship and George B. Loring, the Boston saddlers, (also experts,) tends to show infringement. It does not. Neither Winship nor Loring ever saw the patent in suit. Neither knows what the patented design is. Their testimony only tends to show that respondents' saddles resemble certain "Whitman saddles," meaning one of many different styles of saddles made and sold by The Whitman Saddle Company. The wide range of the meaning of the words "Whitman Saddle" was shown at page 8 of this brief. Its range to Loring's mind may be reproduced here.

G. B. Loring's (*Comp's witness*)*test.* Record, page 25.) *C. Int.* 1. How many different saddles having different features of construction are known as Whitman Saddles? *Ans.* Of genuine Whitman's I know of only ladies' and gentlemen's and some with and some without the extension on the cantle.

Respondents offer competent testimony negativing infringement.

H. R Williams'(*Resps' witness*) *test.* (Record, page 202) *Int.* 1. What is your age, name and residence? *Ans.* My name is Harry R. Williams; my age is 25 years; my residence is Hartford, Connecticut. *Int.* 2. What experience, if any, have you in riding horseback and using saddles? *Ans.* I have had more or less experience in riding horseback; at one time having had a horse of my own for a short period. I rode him with a saddle. *Int.* 3. If you had owned and rode for three months more or less, a saddle like that shown in figure 1 of the photograph I show you marked Respondents' Identification Exhibit No. 1, and your saddle had become lost or stolen and you should go to a saddler's for the purpose of buying a new saddle like your old one, would you or not (flaps, jockeys, and straps not now to be considered) take or mistake such a saddle as Complainants' Exhibit A, Complainants' Exhibit C, or Respondents' Exhibit Park Saddle, to be the same as your old saddle? *Ans* No, sir. My impression would be that I would not. *Int.* 4. Why not? *Ans.* The saddle supposed to represent my own is cut away back of the pommel much more than the three exhibits mentioned, and is a much flatter saddle. *Int.* 5. If you

had owned and ridden for three months more or less a saddle like Respondents' Exhibit Whitman Saddle, and your saddle had become lost or stolen and you should go to a saddler's for the purpose of buying a new saddle like your old one, would you or not, (flaps, jockeys, and straps not now to be considered,) take or mistake such a saddle as Complainants' Exhibit A, Complainants' Exhibit C, or Respondents' Exhibit Park Saddle, to be the same as your old saddle? *Ans.* I should not. *Int.* 6. Why not? *Ans.* Because the saddle supposed to be mine is cut away back of the pommel much more than either of the three exhibits mentioned.

T. W. Gleason's (*Resps' witness*) *test.* (Record, page 201.) *Int.* 1. What is your name, age, residence, and occupation? *Ans.* My name is Thomas W. Gleason; my age is 27 years; my residence is Hartford, Connecticut, and my occupation is insurance clerk. *Int.* 2. To what extent, if any, have you ridden horseback and used saddles? *Ans.* Occasionally since childhood and considerably during the past four years. *Int.* 3. How long, if at all, were you in the Connecticut National Guard? *Ans.* Between six and seven years. *Int.* 4. During what portion of that time were you a mounted officer.? *Ans.* About three years. *Int.* 5. If you had owned and ridden for three months, more or less, a saddle like that shown in figure 1 of the photograph I show you, marked Respondents' Identification Exhibit No. 1, and your saddle had become lost or stolen and you should go to a saddler's for the purpose of buying a new saddle like your old one, would you or not (flaps, jockeys, and straps not now to be considered,) take or mistake such a saddle as Complainants' Exhibit A, Complainant's Exhibit C, or Respondents' Exhibit Park Saddle, to be the same as your old saddle? *Ans.* No. *Int.* 6. Why not? *Ans.* On account of the angular profile of the opening in the saddle as viewed from the side. *Int.* 7. If you had owned and ridden for three months, more or less, a saddle like Respondents' Exhibit Whitman's Saddle and your saddle had become lost or stolen and you should go to a saddler's for the purpose of buying a new saddle like your old one, would you or not, (flaps, jockeys, and straps not now to be considered,) take or mistake such a saddle as Complainants' Exhibit A, Complainants' Exhibit C, or Respondents' Exhibit Park Saddle, to be the same as your old saddle? *Ans.* No. *Int.* 8. Why not? *Ans.* For the same reason as given in my answer to Int. 6.

C. L. Burdett's (*Resps' witness*) *test.* (Record, page 195.) *Int.* 1. What is your name, age and residence? *Ans.* My name is Charles L. Burdett; my age is 38 years; my residence is Hartford, Connecticut. *Int.* 2. To what extent, if at all, have you you been accustomed to riding on horseback and using saddles?

Ans. As a boy I rode at times, and in later years have ridden for pleasure, and for the last four years I have ridden a horse as required by my duty in connection with the Connecticut Guard. For about eight days in each of the last four years at the encampment I have ridden a horse the greater part of each day; and at odd times during the year have used a saddle for riding. *Int.* 3. What is your office in the Connecticut National Guard? *Ans.* Major, and Engineer, and Signal Officer. *Int.* 10. If you had owned and ridden for three months, more or less, such a saddle as Complainants' Exhibit A and C, and your saddle had been lost or stolen and you were to go to a saddler's to buy a new one like your old one (flaps, jockeys, and straps, not now to be considered) would you or would you not at the saddler's take or mistake a saddle the same as Respondents' Exhibit Whitman Saddle to be the same as your old one? *Ans.* Probably not. *Int.* 11. What difference or differences in those saddles would prevent such a mistake? *Ans.* The pommel in Respondents' Exhibit Whitman Saddle is distinctly different from the pommel in the saddles Exhibits A and C, in having the sharply defined rear outlined by a fall of over an inch from the top of the pommel to the line of the top of the bar at the edge of the slot. This peculiarity of the Respondents' Exhibit Whitman Saddle I am confident would impress me strongly on seeing the saddle. *Int.* 12. If you had owned and ridden for three months, more or less, a saddle the same as Respondents' Exhibit Whitman Saddle, and that saddle had become lost or stolen and you should go to a saddler's for the purpose of buying anew saddle like your old one, would you or would you not (straps, flaps, and jockeys not now tobe considered) take such a saddle as Complainants' Exhibit A, Complainants' Exhibit C, or Respondents' Exhibit Park Saddle to be the same as your old saddle? *Ans.* Probably not, for the reason that I cannot find in those three saddles the peculiarly marked features that so impressed me in the pommel of the saddle, Respondents' Whitman Saddle. *Int.* 13. If you had owned and ridden for three months, more or less, such a saddle as is shown in figure 1 of Complainants' Exhibit Whitman Patent and your saddle became lost or stolen, and you went to a saddler's to buy a new saddle like your old one, would you or would you not (jockeys, flaps, and straps, not now to be considered) take or mistake such a saddle as Complainants' Exhibit A, Complainants' Exhibit C, or Respondents' Exhibit Park Saddle to be the same as your old saddle? *Ans.* Probably not. *Int.* 14. Why not? *Ans.* For the reason that the peculiar effect produced on my mind by the outline of the pommel B is not produced when I examine the saddles inquired of.

The following is competent as an admission by complainant, the witness being the superintendent of complainants' factory.

J. D. Freeman's (Comps' supt.) test. (Record, page 71.) *C. Int.* 168. Suppose that you had ridden for three months, more or less, a saddle the same as Respondents' Exhibit Whitman Saddle and your saddle had become lost or stolen and you should go to the saddler's to buy a new one the same as your old one. Would you take or mistake either of the saddles Complainants' Exhibits A and C, (never mind the flaps, straps, or jockeys) to be the same as your old one? *Ans.* I should not take this saddle (putting his hand on Respondents' Exhibit Whitman Saddle) to be the same as those over there, either of them, (pointing to Complainants' Exhibits A and C.)

W. E. Simonds,
Counsel for Appellant.

UNITED STATES SUPREME COURT

IN EQUITY

CHARLES G. SMITH et al.,

Appellants,

vs.

WHEELER SADDLE COMPANY,

Appellee.

APPELLEE'S BRIEF.

C. G. Burgess, Printing and Engraving Co., N. Y.

United States Supreme Court.

IN EQUITY.

CHARLES G. SMITH ET AL.,
APPELLANTS,

versus

WHITMAN SADDLE COMPANY,
APPELLEE.

APPELLEE'S BRIEF.

The Court below, after full oral arguments and printed briefs filed by counsel for both parties, and after a critical examination and full discussion of the various exhibits relied upon by the respondents to show the prior state of the art and anticipate the patent in suit, held that the patent was valid, and that the saddles, like Exhibits A and C, made and sold by the respondents, were an infringement thereof.

The opinion of the Court below is quoted in the brief of the appellants, the respondents below.

Before referring to the general or specific assignment of errors set forth in appellants' brief, it seems proper to call attention to the patent in suit, to appellants' manufacture and sale of the alleged infringing saddles, and to the question of infringement.

THE WHITMAN DESIGN AND PATENT.

Complainant has introduced in evidence two saddles, marked "Exhibits A and C," the same being saddles made and sold by respondents in alleged infringement of the patent in suit.

Complainant has also introduced in evidence several saddles of its own manufacture, embodying the design of this Whitman patent, and the same are marked as follows:

Complainant's Exhibit D, Complainant's Exhibit E, and Complainant's Exhibit, "Newbury-Witman Saddle." Photographs of these exhibits have also been introduced and properly marked.

The design described and claimed in the Whitman Patent and embodied in the Exhibits D. E and "Newbury-Whitman Saddle," is stated by Mr. Newbury, complainant's witness (Record p. 29, Int. 4), to relate to "that portion of the saddle above the lower line of the tree," and to consist of "the curves and lines applied to a saddle," well stated in the specification, as follows:

> "The lines I employ to give the profile, form a new design "for saddles, and giving the general idea in the front, lower and "rear lines of a sea-fowl or vessel modeled upon the same "curves, and by these curves and lines giving the impression "of lightness, grace and comfort, that could not as well be "conveyed by any others, as the impression of comfort is "given by the large amount of bearing-surface obtained with-"out undue elevation above the back of the animal, com-"bined with the large seat for the rider, and lightness and "grace by the small surface of tree shown in vertical plan, "coupled with the form in which it is presented."

He adds:

> "The appearance of the design as a whole, suggests to "the beholder, a swan-like movement and the idea or image "of a graceful and easy motion for the horse and rider."

Stated briefly the design is for saddles showing a pommel and cantle sufficiently high to give needed support without presenting any dangerous obstruction, with a large bearing surface, and with

great relative seat room, narrow where the legs pass over, with the pommel in front gracefully cut backward toward the saddle, with the top not presenting any under prominence, with the cantle peaked intead of round, gracefully curved backward and with a longitudinally slotted tree.

The Witness Newbury also states (Record p. 29. Int. 4) :

> " The design as a whole is harmonious and symmetrical " and produces an effect to the eye which is pleasing owing " to the fact that the lines of the design in a measure ap- " proach the lines of the horse, and also because the appar- " ent length of the seat gives the idea of comfort to the rider " as during the ordinary movements of the animal the body " of rider will not be brought into oontact with the pommel " in front or the cantle in the rear, and the apparent depth " of the seat gives the idea that, should the horse stumble, " the pommel will prevent the rider from being pitched for- " ward over it and on to the neck of the horse ; or should the " horse suddenly jump or spring forward the body of the " rider would not pass over the cantle on to the haunches of " the horse, and thus endanger the position of the rider. " The apparent narrowness of the tree or saddle, at the point " where the legs of the rider grasp or grip the body of the " animal, gives the idea of security of position to the rider as " well as of comfort, as the legs of the rider can the more " readily and securely grip the body of the animal owing to " the small extent to which they are extended near their " juncture with the body of the rider."

The following propositions are conclusively established by the testimony :

1. The saddles embodying the design of the patent are essentially and distinctively different in appearance to the eye, and in the effect upon the mind from any of the saddles offered in evidence or referred to by the respondents, and proved to have been in use, or on sale, or to have been patented prior to Whitman's invention,

2. The *operatian* of the saddles embodying the design of the patent is essentially different, by reason of their different shape and construction which give them a distinctive appearance, from that of any

of the saddles offered in evidence or referred to by the respondents, and proved to have existed before Whitman's invention.

Whitman himself invented and produced, after much effort, during a period which extended over several months, and detailed in the deposition of the complainant's witness Van Ness (Record, pp. 74–76, Ints. 4–30) the new, useful and original design for saddles and clearly came within the provisions of the statutes relating to obtaining patents for designs (Rev. Stat., Sec. 4929).

RESPONDENTS' MANUFACTURE.

The respondents, under the firm name and style of Smith, Bourn & Company, have been engaged since the first day of January, 1886, and before the commencing of this suit, in making and selling saddles like Complainant's Exhibit A and Complainant's Exhibit C (Record, pp. 142, 143; p. 181 x-Int. 60; p. 23, Int. 15).

The respondents entered upon the manufacture of these saddles early in the decade of 1880, buying the saddle-trees of the complainant (Record, p. 99, Ints. 7 and 16; also pp. 179 and 180, x-Ints. 41–42), and soon after January 1st, 1886, upon the withdrawal by the complainant, of the unfinished saddles from the market, continued to reproduce the same article upon saddle trees, manufactured by one, the J. S. Sullivan Saddle Tree Company, a corporation organized under the laws of the State of Missouri, and doing a large business in the penitentiary at Jefferson City, employing from 150 to 225 convicts, furnished by the State of Missouri together with free rent and steam, at nominal figures (Record, pp. 140–141, Ints. 9–14, and p. 109, x-Int. 44).

The use, by the respondents of the saddle-trees, made by the Sullivan Company, was upon a guarantee by that company entered into prior to this suit, which suit the respondents then considered probable (Record, p. 176, Int. 3; also p. 144, x-Ints. 57½ and 58½; also p. 145, Re-d. Int. 7.)

While engaged in the manufacture of these saddles, prior to 1886, upon saddle trees furnished by the complainant, the respond-

ents and their selling agents spoke most favorably of the qualities of this design (Record, p. 99, Int. 12; also p. 106, Ints. 18, 19 and 20).

One of the purposes of the respondents, in defending in this suit, is in order to hinder hereafter, the making of saddle trees under designs or patents, as is shown in the testimony of the witness Bourn (Record, p. 176).

> Int. 3. Has the J. S. Sullivan Saddle Tree Company, of Jefferson City, Missouri, to pay all costs and damages to Smith, Bourn & Co. in case the Whitman Saddle Company prevails in this suit?
>
> A. Yes, sir. I will say this much: we have a pecuniary interest in the future if they prevail, because if they prevail, all trees in future would be made under designs or patents.

INFRINGEMENT.

There is no question that the respondents have put upon the market a very close imitation of the patented design; they have, in fact, made it as close as it was possible for them to do, the saddles being made upon exact copies of the complainant's saddle trees; and the saddles, being leather covered, with open seats, with the longitudinal slot left open, follow closely the outine of the saddle trees, as is shown by the testimony (Record, p. 178, Ints. 21, 22; also p. 186, Int. 33; also p. 89, x-Ints. 138-140).

The saddle trees from the Sullivan Company, used by the respondents for these saddles, were made after the obtaining, by J. S. Sullivan, of saddle trees made by the complainant and the shape was followed as closely as possible. A saddle tree made by the complainant was also sent to Sullivan by the respondents for use as a model as stated by witnesses.

Testimony of the witness Sullivan, at St. Louis (Record, p. 143):

> x-Q. 54. From what source did you obtain the pattern from which you made these first samples sent out?
>
> A. I can't tell what house I got that sample from.
>
> x-Q. 48. Did it have anything on it showing that it was a Whitman tree?
>
> A. It was what I know as the Whitman tree.

X-Q. 56. Do you know that your method of construction or the wood work was different?

A. I think in some instances, or rather some parts, our method of construction was different, but we obtained the same shape.

X-Q. 41. When you sold them similar saddle-trees the first time was it in response to their order for such trees without previous correspondence or solicitation, or was it in response to an interview or correspondence had with them, or their representatives through you or your representatives?

A. I think when I got up the tree we call the "Park Tree" I sent Smith, Bourn & Company one as a sample.

X-Q. 42. Did you receive an order in response to that sample, and was the sample satisfactory?

A. I think the sample of that tree was satisfactory.

X-Q. 43. Did they immediately or soon after order some of those trees?

A. I presume they soon after ordered some of those trees.

Testimony of the witness Bourn (at Hartford, Record, p. 181).

X-Int. 61. Were the sample or sample of Park trees which were first sent to you, satisfactory or not?

Ans. They were not.

X-Int. 63. Did you or any person to your knowledge tell the Sullivan Company that you wanted toose Park trees made like the Whitman trees or did you or any one to your knowledge send them a Whitman tree for a sample?

Ans. I think we sent them a Whitman tree after the receipt of their sample tree and at their request.

X-Int. 64. After that did they make some changes in their Park trees, and were such changes satisfactory to you?

Ans. Yes, there were changes and they were satisfactory.

The saddles, Exhibits A and C, or others equally infringing, were ordered, by the retail dealer who sold them, as Whitman saddles (Record, p. 19, Ints. 26–29); were sold and billed by the jobber to the retailer as Whitman saddles (Record, p. 22, Ints, 62, 63), such a bill being in evidence (Record, p. 18, Ints. 11–14; also p. 24, Ints. 9, 10, 13 were represented or sold to the Boston police as Whitman saddles (Record, p. 18, Ints. 11–14; pp. 21, 22, Ints. 60–62), and were returned to the retailer by the police, being unsatisfactory, for reasons apart from those of the lines of the design in

suit, to the great detriment and damage to the complainant (Record, p. 19, Ints. 32, 33; also pp. 104–5, Int. 9).

It is also shown that managing officers of the complainant company were themselves not aware that the complainant company had not made the saddles A and C, until the saddles had been partly uncovered and the saddle trees contained therein exposed (Record, pp. 103–5, Ints. 9–10).

The saddle A is stipulated to have been made by the respondents and to contain a saddle tree made by the J. S. Sullivan Saddle Tree Company (Record, p. 143, top).

The use, by the J. S. Sullivan Saddle Tree Company, of the word "Whitman," is shown by both evidence *and exhibit* by the complainant and denied by the defense (Record, pp. 103–4, Ints. 3, 4, 5).

The only attempt to show that respondents' saddles differ, at all, from the design No. 10,844, in suit, is in the claim that the complainant was not making its saddles in conformity with the design, in that the complainant departed from the line, called the fall, back of the pommel, and which the specification states to fall "nearly perpendicularly for some inches," and which the photographic picture accompanying the specifications shows to be as therein shown, being in conformity with the claim in the specifications which reads

> "The design for a riding saddle, substantially as shown and described."

As the photograph was not taken in exact profile, but canted sideways considerably toward the instrument, and as the description, in specification, was apparently taken from the photograph and not from the model, a saddle made on a saddle-tree procured by Mr. Newbury, the complainant's witness, of the complainant, and slightly changed to conform exactly to what Mr. Newbury understood the design to be was photographed in three positions, to show its exact similarity to the design and to show the relative appearance of the

fall back of the pommel. This photograph is in evidence marked "Complainant's Exhibit, photograph (three views) of Newbury-Whitman Saddle," and the saddle is the "Complainant's Exhibit, Newbury-Whitman Saddle" (Record, pp. 114–116, Int. 6).

The respondents endeavored to show this fall, back of the pommel, to be of an entirely different character, by making a mechanical drawing of figure 1 of patent in suit, but that drawing was decidedly incorrect in execution (Record, p. 111, Int. 3) and the complainant has shown that a mechanical drawing of a photograph cannot give a correct representation of the article photographed (Record, p. 113, Int. 4).

Then a Whitman saddle was altered by the respondents to correspond to their mechanical drawing and to their reading of the patent (Record, p. 181, x-Ints. 55 to 59; also p. 186, Ints. 29 to 32; also p. 192, x Int. 81; also pp. 192–3, Re-d. Ints. 85–88).

The result is the exhibit known as the "Respondents' Exhibit, Whitman Saddle," and a photograph thereof is "marked "Complainant's Exhibit Photograph, Three Figures, of "Respondent' Exhibit Whitman Saddle.'"

The latter shows most manifestly the utter absurdity of the attempt. The line of fall is in the opposite direction; it is several times too great, and, while in Fig. 2 of patent in suit, the point of junction of the line of seat and fall is almost imperceptible, in the photograph of Respondents Exhibit, it is the most striking feature (Record pp. 114–116, Int. 6), showing that the position of the photograph, Fig. 1, magnifies both the actual angle of the fall and also the fall itself (Record pp. 121, 122, Int. 18). It is also shown that the earliest saddle trees made did not have the depth of fall claimed by the defendants (Record, pp. 76, 77, Int 31 to 33). Many of the witnesses are not shown to have known, or had any chance of knowing or being aware of this; nor of the peculiarities of the photographic instrument in changing the relative appearance of lines by magnifying those nearer the instrument as compared with those more distant, and also of magnifying the lines of the very edge, where the instrument makes prominent border lines, which

the workman or expert will not take cognizance of (Record, p. 125, Int. 1.)

This is fully explained in the testimony of the witnesses Newbury and Buck, Newbury states (Record, pp. 121, 122):

> Respondents' witnesses Charles L. Bardett, Thomas W. Gleason and Henry R. Williams, have been asked substantially the following question, viz.: If you had owned and ridden for three months, more or less, a saddle like that shown in figure 1 of the photograph of the Whitman Patent, and your saddle had become lost or stolen and you should go to a saddler's for the purpose of buying a new saddle like your old one; would you or not, take or mistake such a saddle as Complainant's Exhibit A, Complainant's C or Respondent's Exhibit Park Saddle to be the same as your old saddle; and they answered the said question in the negative with, in some cases some qualifications or doubts, and they gave reasons for their answers; one of the said witnesses giving as his reason the angular profile of the opening in the saddle as viewed from the side; meaning, as I understand, the angular appearance seen in Fig. 1, back of the pommel in the photograph of the Whitman Patent, as shown at the point C on said figure; how do you account for the varriance of opinion of these witnesses with your own ideas as previously expressed on this point?
>
> ANSWER. The only way that I can account for it is that they have misapprehended the correct form of the saddle which is represented by the photograph, especially in the part back of the pommel to which they have all referred.
>
> It will be noted that Fig. 1 of the patent shows the saddle in partial perspective, and this necessarily changes the lines of the photograph at this point from what they are in the saddle, that is, the line nearest the camera is made more angular, and that furthest from it more curved then what they are in the saddle itself.
>
> This fact does not seem to have been considered by the said witnesses, for, if it had been, I do not see how they could have been led into their misapprehension of the form of the saddle represented in the photograph of the patent in suit. The witness Gleason speaks of the angular profile of the opening, and I suppose he refers to the apparent angle at the point C in Fig. 1 of the photograph of the patent in suit, which apparent angle is due to the fact above stated, and would not appear in the saddle itself.
>
> If the said witnesses had placed the same exhibit saddles so that their eye would have occupied the same position in

relation to the saddles, that the camera occupied relative to the saddle, when the photograph of the patent in suit was taken, they would have discovered that said exhibit saddles had more or less of the angular appearance at the point corresponding to that marked C in Fig. 1 of the patent in suit, that is, at that portion of the cut down, at the rear of the pommel, where it meets the seat in line nearest the eye.

This I have found to be a fact by so placing the said exhibit saddles in relation to my own eye, and in corroboration of said fact I have caused the said exhibit saddles to be photographed in as nearly the same positions as are shown in Figs. 2 and 2 of the photograph of the patent in suit.

I have also caused the said exhibits saddles to be photographed so as to show them in side profile as nearly as possible by means of the camera.

I have marked the two views of the photograph of said exhibits saddles which correspond with the two views of the photograph of the patent in suit with crrresponding letters snd figures, viz., Fig. 1 and Fig. 2.

I have also marked the side profile view of the same exhibits saddles with the letters and fiigures, Fig. 3. The three views of each of the said exhibit saddles, I have mounted upon three separate cards, so that each card contain three views of one and the same saddle.

Copies of the Photographic exhibits will be found in Complainant's Record.

The witness Van Ness explains the shape of the first tree (Record, pp. 76, 77.)

Q. 31. Look at the photograph of the Whitman Patent in suit now shown you, and state how the first tree made by Col. Whitman in Jacobus' shop, when it was perfected, compared in form and appearance with the tree shown in the said photograph ?

A. The inner line (pointing to the line farthest from the observer, at the junction of the cut down of the pummel with the line of the seat), was more perfect.

Q. 32. You mean that it was more perfect than what line ?

A. It was more perfect than what this outer line at the point C. shows in the photograph.

Q. 33. What was the difference between the outer line of the photograph at the point marked C, and the correspondin part of the Whitman tree as you saw it ?

A. It (the photograph) shows a sharp point, the other was more of a circle.

Witnesses have also shown that there is no appreciable difference between the "Newbury-Whitman Saddle" and those of the complainant's regular manufacture (Record, p. 118, Int 8., also p. 126, Int. 3.). Herein the defence has attempted to make distinctions which the eye does not at all readily perceive.

REFERENCES TO APPELLANTS' BRIEF.

I.

Counsel for Appellants states on page 4 of his brief:—

"1. It was error for the Circuit Court to base its decision, to a "degree, upon the *utility* of the patented design."

The statute now in force is Sect. 4929 of Rev. Stats., and is as follows:—

> "Any person who, by his own industry, genius, efforts "and expense, has invented and produced any new and "original design for a manufacture, bust, statue, alto-"relievo or bas-relief; any new and original design for the "printing of woolen, silk, cotton or other fabrics; any new "and original impression, ornament, patent [pattern,] print "or picture to be printed, painted, cast or otherwise placed "on or worked into any article of manufacture; or any new, "useful and original shape or configuration of any article "of manufacture, the same not having been known or used "by others before his invention or production thereof, or "patented or described in any printed publication, may, "upon payment of the fee prescribed, and other due proceed-"ings had the same as in cases of inventions or discoveries, "obtain a patent therefor."

The meaning of this section has been considered by the Patent Office in several cases, and conflicting decisions have been rendered regarding the clause "*or any new*, USEFUL *and original shape or configuration of any article of manufacture*," some decisions holding that it was the intention and evident meaning of the statute to per-

mit the grant of patents for those articles of manufacture *alone* in which *additional utility* is given to the article by reason of its new and original shape or configuration, while others have held that the *useful* element must be eliminated from the consideration of the question, and the *appearance* of the article must be the decisive test.

Some of these latter decisions of the Patent Office refer to the opinion of the Supreme Court in the case of *Gorham Co. vs. White*, 14 Wall., 511, and are apparently based upon certain expressions of the Court found therein. In that case the patent before the Supreme Court was granted under the Statute of March, 1861, which omitted the word "*useful*" from the clause above quoted. Whatever the Supreme Court, in that case, may have said regarding the subject of esthetics, the decorative arts, and the appearance of things, it is by no means to be assumed that, under the present Statute, in a case where *additional utility* is given to an article by reason of its new shape and configuration, the Court would fail to take into consideration such *utility*, or that it would declare a patent invalid because the new shape or configuration gave an *increased* or *an additional utility* or *usefulness* to the article.

The present statute seems clearly to divide the subject matter of design patents into at least two general classes: One relating to ornamental, decorative and esthetic purposes, which are peculiarly cognizable by the sense of sight, and through that sense may produce pleasing effects upon the mind; the other, relating "to any articles of manufacture" to which new, useful and original shapes configurations are given. This latter class was not thus specifically defined in the Statute of March, 1861. The clear and most evident meaning of this latter clause is that, if a new and original shape or configuration is given to a common article, as, for example, a plowshare, from which it derives or has given to it an *increased or additional utility*—on account of which it becomes a better article than those having the old shapes, such article comes clearly within the subject matter of this clause of the statute.

It is not contended that the *appearance* of this new shape is to be left out of consideration, inasmuch as if it is a *new*

shape its appearance must necessarily be different from the *old* shapes; but it is contended that *increased or additional utility*—clearly proved to belong to an article whose only change over those which had preceded it is in its shape—is proof that its *appearance* has been essentially and materially changed.

This is the view taken by the Supreme Court in the suit of *Lehnbeuter vs. Holthaus*, 105 U. S., 94, brought upon a patent for a design for a Show Case, granted in 1875, and under the existing statute. Justice WOODS, delivering the opinion of the Court, said:

> "The design patented by the complainants differs essentially from any other which has been called to our attention. It is not covered by the other patents which are set out in the record. *Whether it is more graceful or beautiful than other designs is not for us to decide. It is sufficient if it is new and* USEFUL."

In the case of *Simpson vs. Davis* (12 F. R., 144) the suit was brought upon a design patent for a Newel Post, granted in 1880, and under the present statute. There were seven claims, three of which were in controversy; Judge BENEDICT, in commenting upon the design of these claims and the clauses of the statute under which they were severally included, found that the design of the *fifth* claim, if within the statute at all, must be included in the clause which "authorizes a patent for any new and original orna-" ment to be cast or otherwise placed on any new article of manu-" facture;" that the design of the *sixth* claim came under the clause of the statute which authorizes a patent for any "new and original " design for a manufacture;" and that the design of the *seventh* claim fell under the clause of the statute, "or any new, USEFUL and " original shape or configuration of any article of manufacture." The design of the fifth claim was for an ornament on the post; that of the sixth, for the cap of the post; and the seventh for the whole post. Regarding the design of the seventh claim, the Court said:

> "The seventh claim describes an article of manufacture, namely a newel post of a certain shape or configuration, and having among other distinctive features, the ornaments described

in the fifth claim and the cap described in the sixth claim."

* * * "The arrangement of ornament and shape presented by plaintiff's post is new, *useful* and original."

It is evident that in both of these cases the Court laid special stress upon the *utility* resulting from the new shape or configuration of the "article of manufacture."

In the present case, there is no question that the saddles of the Whitman design in suit have a utility far exceeding the shapes or configurations of saddles which preceded it.

The utility of this invention, arising from the shape and configuration, is shown by a number of complainant's witnesses and by testimonials of which copies are printed in the record.

On utility resulting from the new shape and appearance, the witness Newbury states (Record, p. 30, Int. 5) :

"Yes, as I understand the matter, there are real benefits or advantages to both the rider and the horse, arising from the design of the said patent over any of the forms or configurations of saddles which I understand have been known prior to the date of the said Whitman design.

"The length of the seat which enables the rider during the ordinary motions of the animal to remain nearly over the centre of the saddle, and with his body out of contact with either the pommel in the front or the cantle in the rear is a real advantage or benefit.

"The depth of the seat would prevent the rider from being thrown forward on to the neck of the horse should the horse stumble, as well as prevent the rider from being thrown on to the haunches of the horse by passing over the cantle should the horse suddenly spring or jump forward, is also a real benefit or advantage.

"The narrowness of the seat at the point where the legs of the rider grasp or grip the body of the horse enables the rider more readily and firmly to grip the body of the horse, and is a real benefit or advantage.

"The length of the seat not only tends to the comfort and ease of the rider but also to that of the horse, owing to the fact that the body of the rider during the ordinary motions of the horse is out of contact with the pommel in front or the cantle in the rear, and the weight of the rider rests more nearly over the centre of the saddle without bearing upon the pommel in front or the cantle in the rear, which would

> tend to lift the saddle at its opposite end, and where so lifted, putting an extra strain upon the girth which necessarily embraces the horse tightly, and such extra strain would tend to irritate the herse, and the less the weight of the rider be thrown against the cantle or pommel, the less the strain upon the girth and the greater the comfort of the horse."

From the evidence of other witnesses, advantages resulting from this improvement in the configuration of saddles are shown to be:

The fit, avoiding the bruising or hurting of the horse's foreshoulders or neck (Record, p. 52, Int. 14).

Great relative roominess (Record, p. 52, Int. 14).

Safety from rupture and other injury when thrown (Record, p. 54, Int. 20).

Room for turning in seat sideways (Record, p. 54, Int. 20).

Close contact with the horse, both with knees and in the seat, making rider, horse and saddle almost one in appearance (Record, p. 55, Int. 21).

General comfort (Record, p. 81, Int. 25).

The change in the shape or configuration of the saddles, by which these advantages are obtained, is not, and necessarily cannot be, produced without a great change in the *appearance* or *looks* of the saddles, and, in the present case, according to the testimony of the witnesses, the change is of such character and degree that the saddles of the Whitman design in suit could not be mistaken by an ordinary purchaser for any of the preceding saddles referred to by the respondents.

The opinions of customers of the complainant on this subject are clearly shown by the testimonials printed in complainant's record.

A witness of respondents has also shown that the bill of dress of First Regiment, Conn. N. G., calls for the Whitman saddle (Record, p. 202, x-Int. 12).

Thus it appears that, whether the proper interpretation of the statute is that there must be *increased or additional utility* arising

from the new and original shape or configuration of the article of manufacture, or a *distinctive and material difference in appearance* from prior existing articles of the same class, or both of these combined, the saddles of the Whitman design in suit "fill the bill," and are received and included under either interpretation.

II.

Appellants' brief states on page 5, as a second error of the Court below:

> "There is a substantial sameness in the two designs as a whole, which would deceive the eye of an ordinary purchaser of saddles."

Counsel for appellants, under this head, states that "the only evidence of infringement is the *expert* testimony of H. F. Newbury."

It is not true that the only evidence of infringement is the expert testimony of Mr. Newbury. By referring to the record it will be seen that complainant's witnesses Loring and Winship, both of whom were acquainted with and had dealt in Whitman saddles of the patent in suit, and both of whom had also dealt in respondents' saddles, testify that respondents' saddles were so similar to the Whitman saddles that they could see no difference between them. In fact, the witness Loring states (Record, p. 24, Int. 13 to 20) that he could not detect any difference between the Exhibits Respondents' Saddle in this suit (the alleged infringing saddle) and the nine saddles which he sold to the witness Winship. And that seven of the nine saddles were purchased from the respondents and two from the Whitman Saddle Company. He also states (Int. 19 and 20) that the saddles purchased of the respondents re-

sembled the genuine Whitman saddles, and that he sold respondents' saddles as Whitman saddles.

The witness Winship also testifies (Rec., p. 19, Int. 29) that he believed that the saddles bought from Ordway, Kimball & Loring were made on a Whitman tree, and he also states, in the same connection, that he had obtained trees directly from Whitman, and had himself made the Whitman saddle on such trees. These were the saddles sold to the witness Winship by the witness Loring, and of which the latter witness testifies as above. This witness also testifies (Rec., p. 22, Int. 62, 63), in speaking of one of respondents' saddles "Exhibit C," that it was sold by him as a Whitman saddle, and he believed it was such. This witness also states (Rec., p. 18, Int. 9–14) that he sold respondents' saddles to the Boston police, and sold them under the name of Whitman saddles, and that he had previously to this time been acquainted with and sold the genuine Whitman saddles.

Respondents' witness Sullivan, the manager of the Sullivan Saddle Tree Company, who made the saddle trees for the respondents, testifies (Rec., p. 143, x-Q. 45, 48) that the pattern from which he made the samples for the trees was a Whitman tree, and was marked with the word "Whitman" upon it. And he also testifies (in answer to x-Q. 56), in speaking of the Whitman tree and the trees he made, that, although his method of constructing the woodwork may have been different, "*we obtained the same shape*," meaning the same shape as the Whitman tree.

Also, one of the respondents, Mr. Bourn, testifies (p. 182) that he sent to the Sullivan Saddle Tree Company a Whitman saddle tree, and that, after the receipt of the same, the said company changed their saddle trees so that they were satisfactory. Such trees so changed were the trees on which respondents' alleged infringing saddles were made.

Henry L. Buck, complainant's witness, states in substance (Record, p. 47, Ints., 50–52), that respondents' saddles, Exhibits A and C, could be readily sold for the Whitman saddles made under the

patent in suit, so far as the shape and general appearance of the saddles are concerned.

W. C. C. Mehlbach testifies to a conversation with the witness Winship (Record, pp. 104–5, Ints., 8–14) and to a critical examination of respondents' saddles like Exhibits A and C, before he could ascertain that they were not genuine Whitman saddles.

III.

Appellants' brief states, on page 5, that the Court erred in disregarding and making immaterial what counsel for appellants regards as a prominent feature of the patent in suit; namely, the fall at the rear side of the pommel.

To show the extent of the fall in the patented saddle, reference is made to the three figures of the photograph marked "Complainant's Exhibit Newbury Whitman Saddle." This exhibit was carefully prepared by the witness Newbury, as testified by him (Rec., p. 117, just prior to the point where the exhibit is offered in evidence.) He states, in substance, that he procured a saddle tree of the Whitman Company which he slightly changed and covered so that when placed in the position shown in the photograph of the patent it would give substantially the same shape and appearance as those of the patent. He says he took care and great pains to place the saddle in exactly the position shown in figures 1 and 2 of the patent in suit. The witness Newbury (Rec., p. 33, Re-d. Int. 21), when comparing respondents' saddles with an enlarged mechanical drawing, assumed by respondents' counsel to be a correct enlargement of Fig. 1 of the patent in suit, states, in regard to the pommels, as follows:

> "The appearance of the design, taken as a whole, is such that, in first looking at the saddle, that difference was not ap-

> parent to me, and I can only distinguish it by comparing the saddles and the design at that particular point, having both the saddles and the design before me while making the comparison, and for this reason I deemed it an immaterial and unsubstantial difference, because it did not produce such an effect upon my eye as would enable me to distinguish the exhibits from the design, and therefore I do not think it such a difference that it could be readily carried in the eye by the ordinary observer from place to place."

The Court below, in its opinion, referring to the above point, which counsel for appellants considers error, states :

> " The specification says that the pommel, on its rear side, falls nearly perpendicular for some inches, when it is joined by the line forming the profile of the seat, and in the picture the point of the junction is an angle, whereas, in the manufactured articles, it is a curve. The difference between the patented and the manufactured shape is not important enough to justify a serious question in regard to the fact of infringement. There is a substantial sameness in the two designs, as a whole, which would deceive the eye of an ordinary purchaser of manufactured saddles."

IV.

Counsel for appellants has referred, on page 6 of his brief, to what he calls " marketable utility " of complainant's saddles, and endeavors to show that the sales of complainant's saddles were comparatively small, and prints two letters relating to said saddles.

It is true that the number of saddles sold by the complainant is small as compared with the sales of many manufacturers of saddles and saddle trees. The reason for this is obvious and is two-fold. It is well known that it is a difficult thing to put upon the market a new article like a saddle, and at once obtain large sales for the same. It is also true that complainant's saddles were high-priced

saddles as compared with the saddles referred to by the witnesses for respondents, selling from $20 to $65 each, while the saddles spoken of by respondent's witnesses fold from $2 to $10 each.

Complainant offered in evidence copies of testimonial letters which it had received from various parties in relation to its manufacture and sale of the Whitman saddle. These testimonials were from representative men who were thoroughly experienced equestrians. We take the liberty of inserting three or four of such testimonial letters relating to saddles made under the patent in suit.

"HEADQUARTERS DEPARTMENT OF THE MISSOURI,
"FORT LEAVENWORTH, Kansas, January 18, 1886.

"THE WHITMAN SADDLE CO.,
"No. 25 Murray Street, N. Y.:

"GENTLEMEN—Yours of the eighth instant is received. "After years of experience with mounted troops, I have no "hesitation in saying that I regard the Whitman saddle as the "best in use for military purposes.

"Very respectfully,
"NELSON A. MILES,
"Brigadier-General,
"U. S. Army."

"THE WHITMAN SADDLE CO.,
"New York:

"GENTLEMEN—I have just had a rough mountain ride of "some two hundred miles with one of your saddles and bridle, "in which the comfort of both, to horse and rider was fully "demonstrated.

"Yours respectfully,
"T. F. BAYARD."

"NEW ORLEANS, February 6, 1886.

"THE WHITMAN SADDLE CO.,
"New York City:

"DEAR SIRS—At the request of my friend Mr. Jno. A. Morris "of this city, I inform you with pleasure that, a few years "since, I bought one of your saddles, which I have used *con-* "*stantly.* I consider it one of the best I have ever tried—it is "easy on the rider and horse, is light and strong, and does not "chafe the horse. I have recommended it to many friends "here. I am,

Yours very truly,
G. T. BEAUREGARD."

"ADJUTANT GENERAL'S OFFICE,
"HARTFORD, January 16, 1886.

"WHITMAN SADDLE CO.,
"New York:

"GENTLEMEN—It gives me great pleasure in stating that the "Whitman saddles furnished this State have been in service "several years and have given excellent satisfaction, and I do "not hesitate to recommend them as being the very best in use "so far as I know. Certainly if this State were to purchase any "more saddles of any kind your company would receive orders "for the 'Whitman.'

"Respectfully,
"STEPHEN R. SMITH,
"Adjutant-General."

("Late commanding Brigade Conn. Nat'l. Guard for 6½ "years.")

V.

It is evident that the point which appellants' counsel most relies upon to defeat the patent in suit is the similarity between the front or pommel part of a so-called Granger and the rear or cantle part of a Jenifer saddle. To illustrate this point, counsel has prepared *a folding Photographic Illustration* (Appellants' Brief, between pp. 28 and 29), showing, when unfolded, a slotted Granger saddle and a Jenifer-McClellan, and showing, when folded so that the front part of the Granger is joined to the rear part of the Jenifer, a saddle which resembles the Whitman saddle of the patent. The ingenuity of appellant's counsel in getting up the saddles and illustration is acknowledged, and it is admitted that the photographs, when folded together, exhibit a saddle which bears a striking resemblance to the Whitman saddle.

Unfortunately, however, for the success of the scheme, the facts, as proved by the record, furnish no warrant whatever for any such illustration, there is not the slightest proof that any saddle like the so-called slotted Granger was ever made prior to the grant of the Whitman Patent in suit.

As this point is put forward with so much force and skill by appellant's counsel, and is evidently considered by him as the main argument against the patent in suit, it is proper to call the attention of the Court to the proofs relating to the so-called slotted Granger saddle.

The only witness who claims to give any testimony whatever that slotted Granger saddles were made prior to the date of the Whitman patent, is WILLIAM T. GOODSELL, the foreman of respondents' factory, and his only statement regarding this matter is as follows (Rec., p. 194):

> "Re-d. Int. 97. As regards the Granger saddles which you testify that you know of prior to 1876, were they, or were they not, made up with the central slot left open?
> "Ans. *My impression* is they were left open."

This witness had previously been examined at length, and had spoken at length regarding the Granger and other saddles with which he claimed to have been familiar. He had not, however, stated in his former examination that the Granger saddles, when made up, *had an open central slot*, and he was evidently recalled for the express purpose of testifying on this point. His entire knowledge on the subject is summed up in his brief answer above given, to the effect that he had *simply an impression* that they were made with the open slot. Whatever knowledge this witness had of the Granger saddles was obtained while he was in the employ of S. H. Condit at Newark, N. J. He states that he had nothing to do with the Granger style of saddle trees after he left Condit's in 1872 until he entered the employ of the respondents in 1885 (Rec., p. 167, x-Ints. 56–62).

It is admitted that, prior to the grant of the patent in suit, what were called Granger slotted saddle *trees* existed, and there were several styles of such trees. When these trees, however, were used in the manufacture of saddles, the finished saddles were in all cases made with *closed* seats, that is, the central slot was entirely covered over with the leather, and stuffing was introduced between the tree and the outside covering leather, to produce what is known as a

padded seat saddle, whose appearance is strikingly different from an *open-seated saddle* like that called for by the patent in suit, or from the saddles made by respondents, which are provided with *an open central slot* extending from the pommel back to and into the cantle. To prove that none of the Granger saddles were made up with open-slotted seats, like Respondents' Exhibit Slotted Granger Saddle and like the saddle shown in the Photographic Illustration in appellant's brief, between pages 28 and 29, and the middle Photographic Illustration between pages 30 and 31 of appellants' brief, reference is made to the testimony of the following witnesses:

B. F. WILLIAMSON (Record, p. 160).

"Re-d. Int. 1. Have these Granger saddles trees ever since you first knew of them, been made up—that is, some of them—with the slot through the centre left open?

"Ans. Not that I remember of.

* * * * * * * *

"Re-d. Int. 6. Do you say that all the Granger trees that you have seen made up have that single (central) slot covered up?

"Ans. Yes, sir."

Whether the covering of the saddle be with plain leather, as stated by Williamson in answer to cross-questions 7 and 8, or whether it be quilted, is immaterial, both fashions being fully described by the other witnesses quoted below. Witness does not say that there is nothing under the leather.

This witness had had a large experience in the manufacture of various kinds of saddles, and for many years was with one of the largest saddle manufacturers of the West. He worked as a saddler in the City of St. Louis, the place of the origin of the Granger saddle, for twenty-five years.

WILLIAM HILL, one of the respondents' witnesses (Rec., p. 191, x-Int. 74, *et seq.*).

This witness states, in speaking of the use of the Granger tree, that the saddles made therefrom were quilted Somerset, English, and that the seat was always set or snowed.

L. CUNNINGHAM testifies (Rec., p. 80):

"Int. 11. How were these Granger saddles made up at Condit's; I mean the style of their make-up?

"Ans. Made up with a closed seat.

"Int. 12. Explain what you mean by made-up with a closed seat?

"Ans. A strainer runs over the central slot. After the strainer is dried, the workman will go to work and snow the seat—throw the hair over it and make it to shape; then you draw a piece of muslin or flannel over it to cover the hair; if the shape don't suit, you have got to alter it; then it is covered with leather—either hogskin or bridle."

This witness worked for the firm of S. H. Condit, and during the time that the said Goodsell worked at Condit's. His attention is called to the testimony of Goodsell regarding the Granger saddles with open seats, and he states (p. 80, Int. 19) as follows:

"Int. 19. Mr. Goodsell says in his testimony given in this suit that it was his impression that Granger saddles were made up at Condit's shop with the central slot left open. Can you tell whether or not Mr. Goodsell is mistaken in making that statement?

"Ans. I never remember a Granger saddle made with an open seat. What I mean by an open seat is the central slot left open."

Witness also states (Ints. 20 and 21) that he worked continuously at Condit's from the time the first Granger trees were received there until the witness Goodsell left their employment, and that if there were any Granger saddles with open seats made in that factory he would have known it.

This witness identifies a photograph shown him, the same being marked "Complainant's Exhibit Photograph of Granger Saddle," as a correct representation of the Granger saddles made at Condit's.

PETER J. VOGEL (Record, p. 101, Ints. 29–33) testifies that he knew of Granger saddles made prior to 1878 at the factory of Peters-Calhoun Company, and that such saddles were made "with *closed seats*," the seat covered with hair, snowed, Somerset skirts, no jockeys. "Those that I saw had quilted puffs, the seat quilted behind and in front."

He also states that the Granger saddles which he knew of were like saddle shown in "Exhibit Photograph of Granger Saddle."

See, also, testimony of witness Van Ness (Record, p. 78, Ints. 44-48). Also witness Freeman (Record, p. 59, Int. 37) states that he never saw, prior to 1878, Granger saddles made up in the style of "Respondent's Exhibit Slotted Granger Saddle," but that all Granger saddles with which he was acquainted had been made with closed or covered seats.

All of the above witnesses were experienced saddle makers and had served at this trade a long time prior to the date of the patent in suit.

In consequence of the entire lack of proof of the prior existence of any slotted Granger saddle, we respectfully ask the Court to give no consideration or weight to the Illustration made by appellant's counsel and exhibited between pages 28 and 29 of his brief, as the entire force and pertinence of such Illustration depends upon the prior existence of the so-called Granger saddle therein shown. No such saddle existed prior to the date of the patent in suit, and we do not understand how counsel for appellants can justify himself in bringing such an Illustration to the attention of the Court, unless he had entirely overlooked the testimony on this point.

If counsel had made use, in his Illustration, of a Granger saddle, *as it actually was made prior to the patent in suit*, he would have produced an illustration of an entirely different character and appearance. To show the truth of this statement we have taken "Exhibit Photograph of Granger Saddle" (the only form or style of that saddle prior to the patent), and have combined the front half thereof with the rear half of a Jenifer-McClellan, producing an Illus-

tration after the style, but strikingly different in appearance, from the Illustration of appellants' counsel. This combination of saddles does not produce a saddle which would be mistaken for the Whitman.

The Whitman Patent states:

> "The nature of my design is fully illustrated in the accompanying photographic picture, to which reference is made." * * *
>
> "A plan view of the saddle shows a centre longitudinal slot extending from pommel to cantle."

Both views of the saddle in the drawings of the patent show the longitudinal central slot, or open seat, with great distinctness, and a saddle, like the Granger as actually made, which did not contain such open seat or longitudinal slot, would leave out an essential feature of the patent and differ most materially in appearance from the Whitman saddle.

If it were a fact (as appellants' counsel has assumed contrary to the proofs) that both the so-called slotted Granger and the Jenifer-McClellan existed prior to the date of the Whitman Patent, it by no means follows that it would not have required patentable invention to have combined the two to produce a saddle like the Whitman.

There is no proof that saddles have ever been changed in the manner indicated by appellants' Illustration and as he suggerts in the text of his brief. In fact, such a change would be impossible without making radical and material alterations in both of the saddles which are to be combined into a new saddle. This could not be done without expert knowledge and skill of a high character.

Respondents' claim that there was no inventive genius or study required to produce the Whitman design in view of the prior state of the art is shown to be absolutely untenable by the complainant's witnesses (Record, p. 59, Int. 42; p. 60, Ints. 43 and 44); and it is also shown, contrary to the respondents' claim, that Whitman did produce it as the result of his own genius, experience and mental effort. That this effort was continuous and extended over a considerable

period is testified to by the witness Van Ness (Record, pp. 74 to 77).

It is also shown that the Sullivan Company, the makers of the saddle-trees of the infringing saddles, not only studied the design accompanying the patent papers, but also secured a Whitman saddle-tree of this design for use as a model (Record, p. 143, x-Ints. 45-48), as well as receiving one from the respondents to work by (Record, p. 182, x-Ints. 63, 64), and even then had to make several attempts before they could succeed in satisfying this previous purchaser of the *bona fide* saddle-tree (Record, p. 181, x-Int. 61). If it was so very difficult to successfully copy this design, how much greater must its evolution out of the brain of the inventor Whitman have been ?

If the new shape or configuration of an article of manufacture, unattended with any additional or increased utility due to such new shape or configuration, is the proper subject of a design patent and includes the necessary genius and study to meet the requirements of the law, as has frequently been decided, most certainly a new design which, in addition to its distinctive and essential appearance, which clearly distinguishes it from all others of its class, posseses a great and substantial utility, cannot justly be condemned on the ground that it required less genius, study and inventive skill to produce it because it is *useful* in addition to being ornamental or of such distinctive characteristic appearance that it would be impossible to mistake it from those which preceded it.

There can be no reasonable doubt that the *quantum* of invention required in the conception and production of the Whitman design was greater than that displayed in most cases of design patents which have been sustained by the Courts.

The following cases in which patents for designs were sustained discuss the question of patentability :

Gorham Co. vs. White, 14 Wall., 511.
Perry vs. Starrett, 3 Ban. & A., 585.
Wood vs. Dolby, 7 F. R., 475.
Foster vs. Crossin, 23 F. R., 400.

Lehnbeuter vs. Holthaus, 105 U. S., 94.
Jennings vs. Kibbe, 24 F. R., 697.
Kraus vs. Fitzpatrick, 34 F. R., 39.
Redway vs. Ohio Stove Co., 38 F. R., 583.
Untermeyer vs. Freund, 37 F. R., 344.
Stearns vs. Beard, 46 F. R., 194.
Anderson vs. Saint, 47 F. R., 764.
Ripley vs. Elson Glass Co., 49 F. R., 928.

In these cases it was found that there was either some *new ornamentation*, or some *new shape or configuration*, or a *combination of ornamentation and shape*, arranged to produce a different appearance to the eye and effect upon the mind from that before given by similar shapes or ornaments.

There is a class of cases in which patents for designs have been defeated for want of patentable invention, as follows:

Northrup vs. Adams (Cheese Box), 2 B. & A., 567.
Richards vs. Hardware Co. (Curtain Chain Loop), 26 F. R., 618.
Osborn vs. Judd (Banner Rod), 29 F. R., 96.
Crocker vs. Cutter (Easels), 29 F. R., 456.
N. Y. Belting Co. vs. Car Spring Co. (Rubber Mat), 30 F. R., 85.

In these cases it was found that the designs were in their general features old; that in some cases there was a *mere substitution of material*, without changing the appearance of prior existing articles, and without giving additional utility; and that in cases of combination of ornaments with shapes or configurations, *both the substantial shapes and ornaments were old and the two were combined without change of the combined parts.*

The design of the Whitman Patent presents a striking contrast when compared with those of this latter class of cases. The beautifully curved front, with the high, yet safe and not conspicuous head and long, easy seat, and restful cantle with its graceful peak, in further combination with the other features or elements of the design, as claimed in the patent, present an *entirely different appearance* and form a *new and useful* function.

It is respectfully submitted that Whitman invented and

produced a new, useful and original shape or configuration of saddles; that a valid patent therefor was granted to the said Whitman, and that the same was duly assigned to the complainants, that the respondents have, under most aggravating circumstances, infringed the said patent and injured the business of the complainant.

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